

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

77-7069

ORIGINAL
WITH PROOF
OF SERVICE

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

BALLON, STOLL & ITZLER,

Plaintiff-Appellant,

-against-

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., ALBERT D. MATHESON,
WILLIAM J. KENNEDY, JOHN A. MURPHY, JACK A. SHEETZ, JOHN
SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT HOLMES, DONALD PETERS,
WILLIAM PRESSLER, ODELL SMITH, ROY L. WILLIAMS, FRANK H.
RANNEY, and JOSEPH MORGAN, not Individually But as Trustees
Under a Common Law Trust of the Central States Southeast and
Southwest Areas Pension Fund,

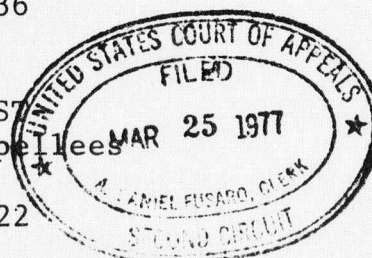
Defendants-Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

EXHIBITS

BALLON, STOLL & ITZLER
Attorneys for Plaintiff-Appellant
1180 Avenue of the Americas
New York, New York 10036
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(6129E)

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PLAINTIFF'S EXHIBIT 1 (FOR IDENT.) -- HANDWRITTEN NOTES OF
FREDERICK E.M. BALLON REFERRED TO ON DIRECT EXAMINATION

(These papers have been mislaid, and as they have been deemed by the parties to be of minimal value to the Court on appeal, their reproduction has been dispensed with by agreement of the parties. A stipulation to this effect has been executed by the attorneys and shall be submitted to the Court.)

PLAINTIFF'S EXHIBIT 2 (FOR IDENT.)-- PROPOSED DEBTOR'S ARRANGEMENT IN THE MATTER OF NEISCO, INC., DEBTOR, DATED APRIL 15, 1970.

BEST COPY AVAILABLE

4341

Plan of Arrangement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter

-of-

NEISCO, INC.,

Debtor.

In Proceedings For
An Arrangement
No. 69-B-769

DEBTOR'S ARRANGEMENT

-----X
The above named debtor proposes the following arrangement:

1. ADMINISTRATION

All costs and expenses of the proceeding are to be paid in cash, upon confirmation hereof, or are to be paid as otherwise agreed upon between the debtor and the administration creditors.

2. PRIORITY CLAIMS

All debts entitled to priority in payment are to be paid in full upon confirmation hereof, or are to be paid as otherwise agreed upon between the debtor and the priority creditors.

3. UNSECURED CLAIMS

All general unsecured claimants shall be paid 12-1/2% of their claims, without interest, in cash upon confirmation of this arrangement.

Dated: New York, New York
April 15, 1970

NEISCO, INC.

By: _____
President

BALLON & STOLL
Attorneys for Debtor
1450 Broadway
New York, New York 10018

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PLAINTIFF'S EXHIBIT 3 (IN EVIDENCE) -- LETTER DATED MARCH
13, 1972, FROM MELVIN A. YELLIN TO RONALD ITZLER, RE:
NEISCO, INC.

SCHAEFFER, DALE, VOGEL & TAVROW

ATTORNEYS AND COUNSELLORS AT LAW

1501 BROADWAY, NEW YORK, N.Y. 10036

AREA CODE 212 PENNSYLVANIA 6-8000

CARL SCHAEFFER
HARVEY P. DALE
LAURENCE VOGEL
RICHARD L. TAVROW

CABLE ADDRESS
"SCAHNDAL"

TELEX 224566

GEORGE L. BARNETT
HELENE L. KAPLAN
MELVIN A. YELLIN
ARNOLD LANDE

March 13, 1972

SYDNEY J. SCHWARTZ
COUNSEL

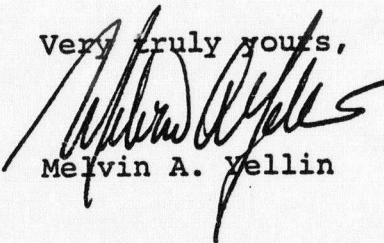
Ronald Itzler, Esq.
Ballou, Stoll & Itzler
1450 Broadway
New York, New York

Re: Neisco, Inc.
69-B-769

Dear Mr. Itzler:

We have been informed that, for the reasons discussed in our telephone conversation, the Central States Southeast and Southwest Areas Pension Fund (the "Fund") will not finance the debtor's plan of arrangement in this matter. This decision was made by the Fund after much deliberation and is final and non-negotiable.

Very truly yours,


Melvin A. Yellin

MAY:ra

cc: Hon. Roy Babbitt
Referee in Bankruptcy
U.S. Courthouse
Foley Square
New York, New York

PLAINTIFF'S EXHIBIT 4 (IN EVIDENCE)-- LETTER FROM FREDERICK
E.M. BALLON TO JOSEPH I. RADOM, ESQ., RE: HORVATH, DATED
APRIL 21, 1970.

April 21, 1970

Joseph I. Radom, Esq.
1800 First National Bldg.
Detroit, Michigan 48226

Re: Horvath

Dear Joe:

Following up our meeting yesterday, I am taking the liberty of addressing you herewith to confirm the various points to which we agreed.

I have made two changes with reference to two of the items discussed. In view of the circumstances, same should be completely agreeable.

If the items hereinafter recited are satisfactory, it is my suggestion that we arrange to incorporate them in an agreement, so that we may govern all future actions in accordance therewith and without any future problems arising between the parties.

As usual, this letter is written entirely without prejudice and shall not be used by the parties against each other or for any purpose whatsoever, unless the same is consummated.

Seriatim, I recite the various points as follows:

1. The Fund will furnish funds necessary to consummate the plan of arrangement in the Neisco Chapter XI proceedings (12-1/2% in cash to general unsecured creditors). I have made an offer to the attorneys for Wiscose to purchase its claim for 15%, all cash, and am awaiting their reply. If the answer is affirmative, the Fund will arrange for the claim to be purchased. If the reply is negative, you will advise me whether you desire the plan to be amended.

Joseph I. Radom, Esq.
April 21, 1970
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2. The sum of \$85,000 heretofore advanced by Montmartre to and for Neisco shall be repaid.

3. Jonallen shall be caused to release to the Horvaths, the stock in Nederlands Mines.

4. The Fund will enter into a "consultant" employment agreement with Ernest for his lifetime, at a salary of \$36,000 per annum, payable semi-monthly. (The first of the modifications to our discussions is that Ernest's previous salary at Neisco, viz., \$1,000 per week, is to be continued until the end of the year. This is an absolute prerequisite in order for his family to be enabled to make an adjustment to a reduced scale of living.)

5. The Fund will arrange for monies to be made available, to a maximum of \$75,000, as the same may be necessary to effectuate a disposition of the claim, if any, of the IRS against the Horvaths for taxes due from Masmo.

6. The security deposit of approximately \$20,000 heretofore made by Montmartre to the landlord, in connection with the lease of the premises in New York City presently used by Neisco, shall be repaid to Montmartre. Montmartre shall be released from any liability on said lease, or indemnified and held harmless against liability thereunder. May I direct your attention to the necessity of making payment of vacation and severance pay to employees in the New York office of Neisco in the event of termination of their employments.

7. Life insurance policies, each in the sum of \$250,000, on the respective lives of the Horvaths (of those heretofore acquired by the Fund), shall be transferred to the Horvaths.

8. The Fund will advance the funds necessary to purchase a 5/8ths interest in one of the two fee interests of the ground adjoining the Montmartre Hotel.

Joseph I. Radom, Esq.
April 21, 1970
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9. With reference to Montmartre:

(a) The Fund will reconstitute the mortgages on the Montmartre complex, making them 25 year life mortgages from the present time, interest at 7% per annum, with a moratorium on payments to the Fund for a period of three years, and with present arrearages of interest being payable at the end of the term, with no interest thereon.

(b) The Fund will not unreasonably withhold its consent to the execution of a subordination of the mortgage as heretofore discussed.

(c) During the interim period, the Fund shall not countersign checks; shall not interfere with the management and operation of the Hotel; and shall make all communications concerning the Hotel solely through George A. Horvath. (This is the second modification of our conversation. This has become an absolute prerequisite by virtue of the hap-hazard and irresponsible failures constantly on the part of the countersignator to countersign checks presented to him. I just learned today that the countersignator has declined to countersign a check for Wasserman & Taten, which he has had in his possession for over a week - despite the fact that this has been authorized time and again and despite the fact that the funds are available in the bank to make payment thereof.)

(d) The ground rents and taxes are to be paid, in escrow, to the Fund, in monthly installments (with a thirty day grace period). Upon any such default, the Fund shall be entitled forthwith to countersign all future checks.

(e) Since there will be no countersignature necessary, it is no longer meaningful for the agreement to make any provision with reference to the salary to be paid to Mr. George A. Horvath, or the amount to be disbursed by Montmartre for the maintenance of an office in New York City. Obviously, the disbursements to be made for these items will be governed and limited by the actual availability of funds in the Montmartre treasury.

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Joseph I. Raddom, Esq.
April 21, 1970
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(f) The Fund will not bid against Mr. George A. Horvath in his attempt to acquire an interest in Kraftspun and various Montmartre shares of stock.

May I hear from you at your earliest convenience?

Cordially,

FEMB/s

Frederick E. M. Ballon

cc:

Sol Eisenrod, Esq.

PLAINTIFF'S EXHIBIT 5 (IN EVIDENCE) -- LETTER FROM BALLON
TO RADOM, RE: HORVATH, DATED APRIL 8, 1970.

April 8, 1970

Joseph I. Radom, Esq.
1800 First National Building
Detroit, Michigan 48226

Re: Horvath

Dear Joe:

Since the counter-proposals at the meeting in our offices were not completely satisfactory to Messrs. Horvath, pursuant to the suggestion of Mr. Eisenrod, I am incorporating herewith a proposal which I truly think should be satisfactory to all parties involved.

Again, this letter is written entirely without prejudice; and is not to be used by any of the parties in any manner whatsoever, or for any purpose whatsoever, unless the same is consummated.

It is proposed that the following procedure be followed:

1. In the pending Neisco Chapter XI Proceeding, a Plan of Arrangement should be promulgated whereunder general creditors would be paid % in cash in full discharge of their claims. Under usual IRS requirements, the minimum amount which it will accept, as a down payment, would be that sum which equals the entire total paid to general creditors. It is our belief that arrangements could be made to make payments of the balance due to IRS over a period of possibly four years. In addition to creditors and the down payment to IRS, administration expenses would have to be paid. The funds necessary to consummate the Plan are to be advanced by the Pension Fund.

Joseph I. Radom, Esq.

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April 8, 1970

Neisco shall be caused to repay to Montmartre, the sum of approximately \$85,000.00, which was advanced to it during the past year for legal and accounting fees.

Neisco shall be caused to make arrangements with Jonallen to release to the Horvaths, the stock in Nederlands Mines, which Jonallen presently holds as collateral security.

2. The Horvaths would execute general releases, transferring all of their right, title and interest in and to all of the Neisco properties, and execute all necessary estoppel certificates and affidavits in consideration of the items hereinafter enumerated.

3. The Fund would enter into an agreement whereby it would employ Ernest as a "consultant" in its textile operations, the term of which agreement would be for his lifetime and the salary to be paid to him would be \$52,000.00 per annum, payable in equal weekly installments.

4. The Fund would rewrite and reconstitute the mortgage or mortgages presently on the properties constituting the Montmartre complex, so as to provide for them to have a twenty-five year life from the present time. There would be a moratorium of any payments under the mortgage for a period of three years; but same would be conditioned upon the payment of ground rents and taxes. The interest rate shall be continued at 7% per annum. However, arrearages of interest shall bear no interest, but shall become payable at the end of the term. It is suggested that the ground rents and taxes can be paid to the Fund in monthly installments, (with a 30 day grace period) so as to avoid the possibility of any default.

The Fund will not unreasonably withhold its consent to execute a subordination of the mortgage and the indebtedness secured thereby to any construction loan which might be obtained for a new structure, or an additional structure to be built upon the premises in question and which would necessarily include demolition of the hotel if same is contemplated within the Plans. The reasonableness of the Fund's consent to subordination shall be judged solely by the fact that a person or group of persons of financial responsibility have interested themselves in the construction aforementioned, (it being understood that George A. Horvath may be a party of interest in said group).

Joseph I. Radom, Esq.

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April 8, 1970

The Fund will advance the funds necessary to purchase a five-eighths (5/8) interest in one of the two fee interests which cover the ground of the premises adjoining the hotel proper.

During the "interim period", the Fund may counter-sign checks; but not interfere with the management and operation of the hotel. All communications by the Fund, or its designees, should be through George A. Horvath, in order to avoid any breakdown in the maintenance of discipline and orderliness in the operation of the hotel.

(a) Montmartre shall maintain a New York office. The expenses of such office during the first eighteen (18) months, for rent and personnel, shall not be in excess of \$45,000.00 per annum; and thereafter, at the rate of \$30,000.00 per annum.

(b) Montmartre shall be released from the lease on the premises it presently occupies; but shall surrender its interest in the \$20,000.00 deposit which it has heretofore made.

(c) George A. Horvath shall be employed by Montmartre as a "consultant", under a lifetime contract, at a salary of \$52,000.00 per annum, plus expenses.

5. The Horvaths will attempt to compromise their derivative liability for taxes due to IRS from Masmo, Inc. The Fund will reimburse the Horvaths for any monies necessary in connection with such settlement in the approximate sum of \$50,000.00 to \$75,000.00.

6. George A. Horvath has indicated his intention to attempt to acquire ownership of the corporation known as, Craftspun, which holds title to the Montmartre stock, and/or the Montmartre stock itself, together with its subsidiary corporations, all constituting the Montmartre complex. The

Joseph I. Radom, Esq.

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April 8, 1970

Fund has agreed that it will not, directly nor indirectly, attempt to bid against Mr. Horvath, nor impede nor frustrate his attempts to secure such ownership.

7. The Fund shall turn back to the Horvaths, the life insurance policies it presently holds on their lives.

As previously stated, I am confident that the mechanical details which will be involved in the execution of the foregoing arrangements can be readily agreed to between ourselves.

May I hear from you at your earliest convenience since time is rapidly becoming of the essence.

Cordially,

FEMB/bz

Frederick E. M. Ballon

cc: Sol Eisenrod, Esq.
420 Lexington Avenue
New York, New York

Irving Rugendorf, Esq.
420 Lexington Avenue
New York, New York

Mr. George A. Horvath
545 Madison Avenue
New York, New York

PLAINTIFF'S EXHIBIT 6 (IN EVIDENCE)-- LETTER FROM BALLON
TO RADOM, RE: MONTMARTRE, INC., DATED JANUARY 21, 1970.

January 21, 1970

Joseph Radom, Esq.
1643 First National Bank Building
Detroit, Michigan

Re: Montmartre, Inc.

Dear Mr. Radom:

In view of the various difficulties we have been encountering with the operation in Florida, I feel constrained to write to you concerning same, with a copy to Joseph Teitelbaum, Esq.

I am particularly concerned about the failure of the Fund to live up to agreements which were specifically made, understood and agreed to with reference to three items:

1. The payment to my firm of the sum of \$25,000.00 which was payable in \$5,000.00 installments. After numerous telephone calls to you and various other persons, the first payment was finally received. The second payment was due today. I can only hope that a check is being mailed to me today. The remaining three \$5,000.00 installments are due respectively on February 20, February 28, and March 20th of this year. You have given me personal assurances, time and again, that the Trustees have approved this several times over, and that I need not concern myself about this item any longer.
2. \$25,000.00 in fees to be paid to Wasserman & Tatem, accountants, likewise in \$5,000.00 installments at various stated times. This was specifically approved of, and agreed to, by the Trustees in a meeting which was held in the offices of Allen Dorfman, in Chicago.

Joseph Radom, Esq.

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January 21, 1970

Present at said meeting were Mr. Dorfman, Mr. Teitelbaum, Mr. Wiser and several other persons in addition to Mr. Horvath, Mr. Polish and the writer. Since that time, I have spoken concerning this item to you, to Mr. Teitelbaum, and to Mr. Matheson. On each occasion, I had been assured that the commitment which was made will be lived up to. However, as a check is presented for counter-signature to Mr. Ennis, your designee, he invariably replies that he is not authorized to sign such check.

3. \$25,000.00 was borrowed by Montmartre, Inc., and was payable likewise in \$5,000.00 installments at stated intervals. The payment of this sum was likewise approved of, and agreed to, at the conference aforementioned, in Mr. Dorfman's offices. This item likewise has been discussed by both Mr. Horvath and myself with all of the parties in question. At the time of my last conversation with Mr. Matheson, and your partner, Mr. Melman, and Mr. Matheson again assured me that the commitment having been made, would be lived up to. Nevertheless, and notwithstanding, again, we are confronted with the problem that Mr. Ennis declines to sign because he claims not to have been authorized so to do.

I consider the foregoing to be a direct breach of the obligations undertaken by the Fund, not only morally, but also legally. There simply is no justification for this type of conduct; and there certainly is no way of operating a business under such conditions.

I am addressing this letter to you, in writing, for the specific reason that you can be in a position to refer thereto in your communications with the Trustees or their respective

Joseph Radom, Esq.

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January 21, 1970

designees or authorized agents or representatives. I well know that you appreciate and understand the difficulties that both Mr. Horvath and the writer are laboring under, when commitments have been made and they are not lived up to.

Please accept this letter in the spirit in which it is written, so that future misunderstandings and difficulties can be averted.

Yours,

FEMB/bz

Frederick E. M. Ballon

cc: Joseph Teitelbaum, Esq.

PLAINTIFF'S EXHIBIT 7 (IN EVIDENCE)-- LETTER FROM BALLON
TO RADOM, RE: NEISCO, INC., DATED JANUARY 21, 1970.

January 21, 1970

Joseph Radom, Esq.
1643 First National Bank Building
Detroit, Michigan

Re: Neisco, Inc.

Dear Joe:

I am hopeful that I will still see you this week, as I have been urgently requesting of you, during the past several weeks. However, in the interim, I deem it most vital to call several matters to your attention, since they require immediate action or thought on your part.

In the first place, the Referee has directed that a Plan of Arrangement be presented to the Court, or at least to the Creditors' Committee, on or before the 29th of this month. Even assuming that my office will be able to obtain an extension of time for a week or so from the Referee, nevertheless we are confronted with the problem of formulating a Plan and arranging for the financing thereof.

In considering the same, it is apparent that the corporation owes general creditors approximately \$500,000.00. In addition, there are taxes owing of approximately \$500,000. Assuming that we could formulate a Plan whereby general creditors would be paid ten (10%) per cent, this would require an investment of \$50,000.00. Of course, it is possible that such a ten (10%) per cent settlement could be payable over a period of time, with a down payment possibly as low as two and one-half (2 1/2%) per cent. Naturally, the question of taxes owing to the government is in a different field entirely. Let us assume that the New York office would be willing to recommend to Washington that a ten (10%) per cent

Joseph Radom, Esq.

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January 21, 1970

settlement is reasonable under all of the circumstances, and let us assume further that Washington would approve such a settlement. This would require an additional investment of \$50,000.00. In return for the foregoing investment of \$100,000.00, together with the necessary sums for administration expenses, we could then acquire a completely free corporation which, at the same time, would preserve a carry forward loss in a very substantial sum.

In connection with the feasibility of the Fund making the funds necessary to consummate such a Plan of Arrangement, I might direct your attention to the Trustee's Report for the first month's period of operations. I am sure you will recall that it was projected by your own auditors that the corporation would have a loss during such month of a minimum of \$55,000.00 before depreciation. As a result of the infusion of funds, and the various other funds *efforts* devoted to the operation by Messrs. Horvath, the operation has been successful beyond all expectations. The figures indicate a loss of only \$14,000.00 before depreciation, even though there was included in the operating expenses some reserves of \$3,000.00 to \$4,000.00, which are actually not needed at all.

Please give the problem of a possible Plan of Arrangement your immediate thought and consideration, since I must have an answer forthwith as to the intentions of the Fund with respect thereto.

I think it is vital for me also to direct your attention to the fact that Mr. Irving Rugendorf is improperly handling the funds of Neisco, Inc., Debtor in Possession. The Court Order specifically provides that disbursement of funds are to be made by the corporation, whose checks are to be counter-signed by Mr. Rugendorf. Instead of this, Mr. Rugendorf has been single-handedly making disbursement of funds without any signator acting for the corporation. It is, of course, the fact that all such disbursement of funds were

Joseph Radom, Esq.

Page -3-

January 21, 1970

made to Neisco in South Carolina; however, it is not proper nor in accord with the Court's Order. I think you should instruct Mr. Rugendorf to correct his procedure.

Again, may I remind you that it is most urgent for us to meet immediately, in order to enable me to proceed with the other filings we have discussed heretofore.

Cordially,

FEMB/bz

Frederick E. M. Ballon

PLAINTIFF'S EXHIBIT 8 (IN EVIDENCE)-- LETTER FROM BALLON TO
SOL EISENROD, ESQ., RE: HORVATH, DATED MARCH 30, 1970.

March 30, 1970

Sol Eisenrod, Esq.
420 Madison Avenue
New York, New York

Re: Horvath

Dear Mr. Eisenrod:

Pursuant to talks had between you and Mr. George A. Horvath, the following proposal is made as a possible vehicle to be used to dispose of all existing problems. Of course, this letter is written without prejudice; and is not to be used by any of the parties in any manner whatsoever, or for any purpose whatsoever, unless the same is consummated.

It is proposed that the following procedure be followed:

1. In the pending Neisco Chapter XI proceeding, a Plan of Arrangement should be promulgated whereunder general creditors would be paid 10% in cash, in full discharge of their claims. Under IRS requirements, the minimum amount which it will accept, as a down payment, would be that sum which equals the entire total paid to general creditors. It is our belief that arrangements could be made to make payment of the balance due to IRS over a period of possibly four years. To consummate such a Plan of Arrangement would require an investment by the Pension Fund of some \$200,000.00 to \$250,000.00, including all payments, excepting only the deferred payments to IRS.
2. George A. Horvath and Ernest V. Horvath, would execute general releases, transferring all of their right, title and interest in and to any of the properties involved, and execute all necessary estoppel certificates and

Sol Eisenrod, Esq.
Page -2-
March 30, 1970

affidavits in consideration for the items hereinafter enumerated.

3. The Fund would arrange to obtain ownership of the realty building and machinery constituting "Belmont Mills", and transfer same free and clear of all encumbrances to a designee of Ernest V. Horvath.

The Fund would arrange to obtain ownership of the realty building and machinery constituting "Mayo Mills", and transfer same free and clear of all encumbrances to a designee of George A. Horvath.

The Fund would arrange to obtain ownership of the realty building and machinery constituting "Michael Mills", and transfer same free and clear of all encumbrances to a designee of George A. Horvath.

At the present time, both Belmont Mills and Michael Mills, are not being operated by Neisco. Both of said mills are leased to third parties; the rental received from the Belmont Mills is \$30,000.00 per year and from Michael Mills, \$12,000.00 per year. Of course, the property would be transferred, subject to such leases. The Mayo Mills has been shut down and is inoperative. Both the Belmont and Michael Mills have been shut down and inoperative until the aforementioned leases were consummated, which was during this past year. There would be no transfer of inventory involved.

4. The Fund would rewrite and reconstitute the mortgage or mortgages presently on the properties constituting the Montmartre complex, so as to provide for them to have a twenty-five year life from the present time. There would be a moratorium of any payments under the mortgage for a period of three years; but same would be conditioned upon the payment of ground rents and taxes. The interest rate shall be reduced to six (6%) percent per annum. *

The Fund would agree that it will subordinate the mortgage and the indebtedness secured thereby to any construction loan which might be obtained for a new structure, or an additional structure to be built upon the premises in question and which would necessarily include demolition of the hotel if same is contemplated within the Plans.

Sol Eisenrod, Esq.

Page -3-

March 30, 1970

The Fund will further agree to advance the funds necessary to purchase the underlying fees provided that a person or group of persons, of financial responsibility, interested themselves in the construction aforementioned (it being understood that George A. Horvath, may be a party of interest in said group).

Further, with reference to the Montmartre situation, During the "interim period", the Fund could countersign checks; but not interfere with the management and operation of the hotel. Of course, George A. Horvath would be paid a reasonable salary.

5. The Fund will hold George A. Horvath and Ernest V. Horvath harmless from any liability for withholding taxes in connection with the operations of Neisco and Masmo.

6. It is intended that a voluntary petition in bankruptcy be filed for Masmo. The Fund will agree to use its best efforts to acquire ownership of the corporation known as Craftspun, which holds title to the Montmartre stock, (which, in turn, holds title to the various corporations constituting the Montmartre complex) and transfer the same to George A. Horvath, at the cost thereof, if any.

There is no intention herewith to formulate the mechanical details which would be involved in the execution of the foregoing arrangements. I am confident that counsel can readily agree thereon. This is to confirm the fact that an appointment has been scheduled at the offices of the undersigned at 9:00 A. M. on April 6, 1970. In the meantime, it is our intention to proceed to negotiation with the Creditors' Committee, so as to be in a position to properly address the Court on the adjourned date, (April 9, 1970) and hopefully, to present to the Court, a Plan of Arrangement, which has been agreed to by the Creditors' Committee, and for which financing is available.

Cordially,

FEMB/bz

cc: Joseph Radom, Esq.

Frederick E. M. Ballon

PLAINTIFF'S EXHIBIT 9 (IN EVIDENCE) -- LETTER FROM BALLON
TO RADOM, RE: NEISCO, INC., DATED JANUARY 23, 1970.

January 23, 1970

Joseph Radom, Esq.
1643 First National City
Bank Building
Detroit, Michigan

Re: Neisco, Inc.

Dear Joe:

I regret having been unable to reach you
by telephone today.

Kindly be advised that my second check, in
the sum of \$5,000.00, was presented for signature to
your client's counter-signator in Florida. As of this
writing, he has again declined to sign same, stating
that he has no authorization to do so.

He has also refused to sign the check for
Wasserman & Tatem in the sum of \$5,000.00; and has
declined to sign the check, in the sum of \$5,000.00
which was to be used on account of payment of the
loans heretofore made to Monmartre, Inc.

Yours,

FEMB/bz

Frederick E. M. Ballon

PLAINTIFF'S EXHIBIT 10 (IN EVIDENCE)-- BILL TO CENTRAL STATES
SOUTHEAST AND SOUTHWEST AREAS PENSION FUND FROM BALLON, STOLL
& ITZLER, DATED MAY 16, 1972.

May 16, 1972

Central States Southeast and
Southwest Areas Pension Fund
29 East Madison Street
Chicago, Illinois

To or on behalf of Neisco, Inc. relating to the Chapter
XI Proceeding in the United States District Court for
the Southern District of New York.....\$100,000.00

Disbursements.....731.06

TOTAL.....\$100,731.06

Received on Account.....25,000.00

Balance Due.....\$ 75,731.06

BDS/tb

BEST COPY AVAILABLE

PLAINTIFF'S EXHIBIT 11 (IN EVIDENCE)-- LETTER FROM RADOM TO
BALLON, DATED MARCH 30, 1970.

JAFFE, SNIDER, RAITT, GARRATT & HEUER

ATTORNEYS AND COUNSELORS

1800 FIRST NATIONAL BUILDING

DETROIT, MICHIGAN 48226

March 30, 1970

IRA J. JAFFE
LAWRENCE K. SNIDER
CECIL G. RAITT
C. WILLIAM GARRATT
JEFFREY G. HEUER
WALLACE H. GLENDENING
DAVID H. RAITT

JOSEPH S. RADOM
OF COUNSEL

(313) 961-8380
CABLE "JAFSNI"

Frederick E. M. Ballon, Attorney
Ballon, Stoll & Shyman
1450 Broadway
New York, New York 10018

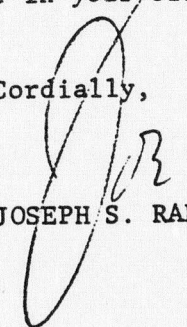
Dear Fred:-

Mr. Al Matheson has made reservations on American Airline
Flight 124, which leaves Detroit at 8:00 A.M. and arrives
at Laguardia at 9:20 A.M. on April 6th.

Therefore, in lieu of the 9:00 A.M. meeting, and depending
on weather conditions, I presume the earliest we can meet
in your offices on the 6th would be at 10:15 or 10:30 A.M.

My present plans are to arrive in New York during the pre-
ceding evening, and I shall therefore be in your offices
not later than 10:15 A.M. on the 6th.

Cordially,


JOSEPH S. RADOM

jsr/wbs
Airmail
cc: Mr. Rugendorf

PLAINTIFF'S EXHIBIT 11-A (IN EVIDENCE)-- LETTER FROM RONALD S. ITZLER TO IRWIN RUGENDORF, ESQ., RE: NEISCO, INC., DATED DECEMBER 24, 1969.

December 24, 1969

Irwin Rugendorf, Esq.,
420 Madison Avenue
New York, New York

Re: Neisco, Inc.

Dear Mr. Rugendorf:

I have just been advised by our client that the premium for December for policy number 15296 of the Prudential Insurance Company of America has not been paid.

Peter A. Saracco, Regional Group Manager of the Company, has stated to us in writing that he will re-instate the policy upon payment of one month's premium of \$7,033.56 and eventual complete payment of the remaining \$26,167.60.

The Creditors' Committee has agreed that if we pay the \$7,033.56, they will consider authorizing the payment of the balance. I am sure that they will consent to it.

In any event, the \$7,033.56 part of the premium for December must be paid because it is an expense of administration of the Chapter XI proceeding.

Your failure to permit this payment and countersign the check could very well mean the cancellation of all of the insurance and the demise of the company. I hope you are aware of the consequences of your refusal.

Sincerely,

RSI/s

Ronald S. Itzler

PLAINTIFF'S EXHIBIT 11-B (IN EVIDENCE)-- PAGE 1 OF LETTER
FROM ITZLER TO RUGENDORF, RE: NEISCO, INC., DATED
JANUARY 16, 1970.

January 16, 1970

Mr. Irving I. Rugendorf
American Revenue Corporation
636 Eleventh Avenue
New York, New York

Re: Neisco, Inc.

Dear Mr. Rugendorf:

I think that certain things must be illuminated if our client's relationship with you is to remain a beneficial one for the company and for the general creditor body and the Union.

There is no question but that your function is an important one and one that will add immeasurably to the protection of the Union funds and the well-being of the corporation. However, for this goal to become a reality, certain elementary rudiments of good business must be recognized by you and the Union.

George Horvath has undertaken to conduct the business of Neisco, Inc. in such a manner as to incur very real and necessary promotional expenses. We all realize that such promotion is an integral part of the operation of any business and especially one where sales play such an important part. No one expects that indiscriminate use of company funds should be made for the purpose of entertaining the principals. However, it is simply good business to utilize company funds to promote the company's business. Unquestionably, entertainment expenses, supported by proper vouchers, should be honored by you. I am sure you understand the necessity for this.

It is the responsibility of Messrs. Horvath to extend credit to such of the Neisco customers as they deem

PLAINTIFF'S EXHIBIT 11-C (IN EVIDENCE)-- PAGE 2 OF LETTER
FROM ITZLER TO RUGENDORF, RE: NEISCO, INC., DATED
JANUARY 16, 1970.

Mr. Irving I. Rugendorf
Page 2 1/16/70

appropriate and within the realm of fair business risk. They have utilized the universally accepted credit information of Dun & Bradstreet and National Credit Office in aiding them in making their credit determinations. For the union to find such an expenditure to be improper seems totally unreasonable, certainly, the union would not want Neisco to make imprudent decisions with regard to the extension of credit. These credit agencies are useful tools and I cannot see why their continued utilization should not be encouraged by the union.

It is true, that in the spirit of economy, Neisco, Inc. has been and will continue to be required to pare its overhead, especially its payroll, until such time as the profit generated warrants the discontinuance of such paring. However, to dismiss valuable people who are paid considerably less than their actual worth is "penny wise, pound foolish". Mr. Horvath advises me that the elimination of certain persons from the payroll will not result in a saving but will result in an increase in overhead since said persons must be replaced by persons of higher salary requirements. I believe that the judgment of Messrs. Horvath in that regard should be controlling or, at the very least, considered by you before determinations are made.

These are among a number of items which Messrs. Horvath have communicated to the undersigned as impedences in the day to day operation of the debtor's business. The debtor, unfortunately, is in sufficient difficulty so as to render the normal operation of its business troublesome. The cooperation of all persons concerned with regard to the items mentioned herein and other items of a similar nature can only aid the debtor, the union and the general creditor body.

We are sure that you will continue to exercise your best judgment with the rehabilitation of the debtor and the protection of the union funds as your primary aim.

Sincerely,

RSI:EK
cc: Mr. George Horvath

Ronald S. Itzler

PLAINTIFF'S EXHIBIT 11-D (IN EVIDENCE)-- LETTER FROM BALLON
TO RUGENDORF, RE: NEISCO, INC., DATED FEBRUARY 11, 1970.

February 11, 1970

Mr. Irving I. Rugendorf
American Revenue Corporation
636 Eleventh Avenue
New York, New York

Re: Neisco, Inc.

Dear Irving:

We are advised by our above named client, that you are attempting to deal directly with employees of the corporation at the mills and in the New York offices. We are further advised that such conduct on your part, completely disrupts the business, its operation and its affairs.

We must insist that you direct all communications directly through channels, and full information will be forthcoming at once.

I received a telephone call today from Mr. Eisenrod, and he requested that I obtain for him, and/or you, projections based upon sales at the rate of \$700,000 per month, \$600,000.00 per month and \$500,000.00 per month, respectively. Upon inquiring of Mr. George A. Horvath, he advised me that such figures were already in the course of preparation and will be delivered to you.

Yours truly,

FEMB/bz

Frederick E. M. Ballon

cc: Mr. George A. Horvath

PLAINTIFF'S EXHIBIT 11-E (IN EVIDENCE)-- LETTER FROM ITZLER
TO CARL SCHAEFFER, ESQ. DATED AUGUST 6, 1970, AND MEMOS FROM
G.A. HORVATH TO ITZLER, DATED AUGUST 5, 1970, RE: NEISCO, INC.

August 6, 1970

Carl Schaeffer, Esq.
1501 Broadway
New York, New York

Re: Neisco, Inc.

Dear Carl:

I enclose herewith various correspondence received from our client today. Included is a list of the people on the New York payroll, together with their salaries, and a cost of operation for the New York office.

Will you kindly review the same as we have discussed.

Sincerely,

RSI/s
Enclosures

Ronald S. Itzler



NEISCO, INCORPORATED

Manufacturers of Yarns and Fabrics

545 MADISON AVENUE · NEW YORK, N.Y. 10022 · TEL. (212) 980-3150

August 5, 1970

To: Ronald Itzler

From: G. A. Horvath

As per your request I will describe herewith the functions of the people on the New York office payroll.

Jack Polish - counsel to the companies and source of information for the various outside attorneys of chronologic happenings of the various corporations prior to reorganization or bankruptcy, and information for filings and information for legal documents that affect the companies statements to the Court.

Tom Blue - messenger, xerox machine operator, and inventory of books and records for all the companies.

Julia Koencke - in charge of credit and certain phases of bookkeeping.

Jack London - controller in charge of internal audit and general bookkeeping.

Emeralda Pinto - receptionist and filing clerk.

Lila Roberts - secretary to the Messrs. Horvaths, in charge of cash receipts and bank deposits, and all the files of the Messrs. Ernest and George Horvath both for general corporate use and for information on reorganization and bankruptcy,

Nancy Schluger - payroll and bookkeeping.

E. V. Horvath	1,000.00
G. A. Horvath	1,000.00
Jack Polish	360.00
Tom Blue	95.00
Julia Koeneke	185.00
Jack London	173.08
Esmeralda Pinto	120.00
Lila Roberts	165.00
Nancy Schluger	182.00

3,280.08

NEISCO INC.

To Ronald Itzler

Date August 5, 1970

From G. A. Horvath

Dear Ron:

I am enclosing a list of the New York office employees and their salaries and the description of their duties. I am also enclosing the cost of operations of the New York office, however, as you notice there has been economies from May to June, and there have been further economies because the office staff, for one, has been reduced by several people and therefore, the salaries would be obviously lower.

I hope that this gives you the necessary information.

INTESCO INC.

Schedule SUPPORTING STATEMENT OF OPERATIONS (General)

	4 week 5/30/70	4 week 6/23/70							
GENERAL AND ADMINISTRATIVE EXPENSES									
EXECUTIVE SALARIES	9912.00	9440.00							
OFFICE SALARIES	4879.57	4594.28							
PAYROLL TAX EXPENSE	338.31	283.35							
RENT	2475.21	2475.00							
ELECTRIC	118.07	27.35							
TRAVEL AND ENTERTAINMENT	1225.97	673.42							
TELEPHONE	1863.88	1016.66							
LEGAL AND PROFESSIONAL FEES	1377.50	1876.34							
INSURANCE	411.41	388.96							
RENTAL OF EQUIPMENT	75.00	221.50							
DUES AND SUBSCRIPTIONS	236.70	270.95							
POSTAGE	74.47	71.37							
STATIONERY AND PRINTING	18.15	246.63							
TAXES	375.00	386.34							
AMORTIZATION OF MOVING EXPENSE	384.66	384.66							
DEPRECIATION	518.2	518.2							
GROUP INSURANCE	157.90	423.27							
MAINTENANCE AND REPAIRS	22.26	224.73							
BANK CHARGES	2.50	1.50							
MISCELLANEOUS	374.19	(108.72)							
TOTAL GENERAL AND ADMINISTRATIVE EXPENSES	24378.36	22953.52							

E-33

PLAINTIFF'S EXHIBIT 11-F (IN EVIDENCE) -- LETTER FROM RUGENDORF TO ITZLER DATED SEPTEMBER 11, 1970, AND COPIES OF CHECKS AND PURCHASE ORDER RE: NEISCO, INC.

IRWIN I. RUGENDORF
Corporate Finance
420 MADISON AVENUE
NEW YORK, NEW YORK 10017
(212) 688-8340

September 11, 1970

980-3150

Ronald Itzler, Esq.
Ballou, Stoll & Shyman
1450 Broadway
New York, New York

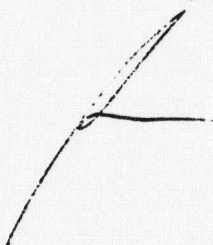
RE: Neisco, Inc.

Dear Ronnie,

In accordance with our telephone conversation, two items of fixed assets have been sold prior to receiving court approval.

I am sitting with checks which should be turned over to the Pension Fund, therefore, please arrange to obtain the appropriate okay from the court. A description of each item and the copies of respective checks are enclosed.

Sincerely,



IR/bk
Encls.

1

E-34

DALTON TRUCK SALES, INC. CERTIFIED CHECK

2527

YOUR AUTHORIZED INTERNATIONAL TRUCK, CUMMINS AND DETROIT DEALER
2309 N. CHESTER ST. P. O. BOX 2185
GASTONIA, N. C. 28052 — PHONE - 865-1251

DATE 9/1/70

66-129
531

1970
CITIZENS NATIONAL BANK
GASTONIA, N. C.
Payable only when properly
indorsed and if unpaid since
originally drawn by the maker.
CITIZENS NAT'L BANK
GASTONIA, N. C.
PAY *B. Greer* Assistant Cashier

\$1750.00

DO NOT DESTROY THIS CHECK
TO THE ORDER OF

DALTON TRUCK SALES, INC. - \$1750 DOLS 00 CTS
Central State Southeast & Southwest Area Pension Fund

DALTON TRUCK SALES, INC.

F. B. Dalton
M. S. Schermer
CERTIFIED CHECK

Strick - Serial No. 59506S . :0531 0129: 004 059 21

130

Strick Trailer
Barter # 316MA

E-35

CHECK NO.
29476

THE LINEN THREAD CO.

A DIVISION OF INDIAN HEAD MILLS, INC.
BLUE MOUNTAIN, ALABAMA

August 3, 1970



61-54
621

PAY
•
TO
THE
ORDER
OF

Neisco, Inc.
P.O. Box 631
Kings Mountain, North Carolina

EXACTLY \$6,333 AND 34 CTS

DOLLARS 6,333.34

THE LINEN THREAD CO.



William J. Smith
PRESIDENT

THE ANNISTON NATIONAL BANK
ANNISTON, ALABAMA

⑆0621⑈0054⑆ 0⑈000⑈

CHECK NO.
28922

THE LINEN THREAD CO.

A DIVISION OF INDIAN HEAD MILLS, INC.
BLUE MOUNTAIN, ALABAMA

July 13, 1970



61-54
621

PAY
•
TO
THE
ORDER
OF

Neisco, Inc.

EXACTLY \$3,166 AND 66 CTS

DOLLARS 3,166.66

THE LINEN THREAD CO.



William J. Smith
PRESIDENT

THE ANNISTON NATIONAL BANK
ANNISTON, ALABAMA

⑆0621⑈0054⑆ 00⑈0002⑈00⑈

PURCHASE
ORDER

THE LINEN THREAD COMPANY

A Division of Indian Head, Inc.
BLUE MOUNTAIN, ALABAMA 36201

3574

SEE INSTRUCTIONS BELOW

DATE 7-10-70



TO

Naisco, Inc.
545 Madison Ave.
New York, New York 10022

MATERIAL FOR		ACCOUNT OR DOCKET NO. <u>70-30</u> C/E to be assigned <u>Ph 3026</u>		REQUIRED DELIVERY DATE
F.O.B. Kings Mountain Inc. Mill Floor Margrace Plant		SHIP VIA Motor Freight		TERMS 1/3 with order Bal. on Deliv
ITEM	QUANTITY	DESCRIPTION	CODE	PRICE
A	1	Saco Lowell Model SD Direct Spinning Frame -		
		BN56053 - 1947 year Model - 204 Spindles -		
		Per Agreement of Mr. Horvath & Mr. Vandervort		\$9500.00
		25 Mr. Vandervort's letter of July 6, 1970,		
		Part of which is quoted below - "Included with		
		the machine will be Pneumafil Equipment, 400		
		spinning bobbins, plus any available spare		
		parts, change gears, etc., which would be		
		assignable to this one machine -"		
		Personnel at Margrace to offer general assistance		
		to mechanics and riggers in dismantling, packing,		
		and XRAYX loading of the machine onto truck		
		for shipment		
		Other portions of the agreement which ^{are} not quoted will		
		remain in effect - These items are quoted to assist		
		in delivery and shipment		

BEST COPY AVAILABLE

ACKNOWLEDGMENT

NEISCO, INC.
NEISLER MILLS DIVISION
ACKNOWLEDGED AND ACCEPTED

Sign and Return To
THE LINEN THREAD COMPANY
Blue Mountain, Alabama

IMPORTANT
PRICE ALL ITEMS CORRECTLY AND
CHECK THE TERMS AND F.O.B.
POINT FOR ACCURACY.

SIGNED FOR THE SUPPLIER
DATE 7-15-70

ACKNOWLEDGMENT COPY

E-37

NEISCO SALES CORPORATION

P. O. BOX 632

KINGS MOUNTAIN, N. C. 28086

TELEPHONE
739-5421
AREA CODE 704

July 15, 1970

Mr. Irwin Rugendorf
American Revenue Corporation
420 Madison Avenue
New York, New York 10017

Dear Mr. Rugendorf:

We are enclosing check received from The Linen Thread Company, A Division of Indian Head, Inc., Blue Mountain, Alabama 36201, for \$3,166.66 covering down payment on one Saco Lowell Model SD Direct Spinning Frame SN 56053 - 1947 year model - 204 spindles. We are also enclosing a copy of Linen Thread Company Purchase Order #3574 which is self explanatory.

Sincerely yours,

NEISCO, INC.



C. W. Goforth
Controller

CWG/at

CC: E. V. Horvath

PLAINTIFF'S EXHIBIT 11-G (IN EVIDENCE)-- LETTER FROM NEISCO,
INC. (G.A. HORVATH) TO RUGENDORF, DATED DECEMBER 18, 1969.

December 18, 1969

Mr. Irwin Rugendorf
636 Eleventh Avenue
New York, N. Y.

Dear Irwin:

Instead of calling you again on all of the subjects that create both problems and irritations I figured I would drop you a note.

We were trying to reconcile monies received from the Fund and monies spent and we find that the Bank of New York is not giving us any information on the subject. We have not received a single piece of advice from them either of receipts or of payouts, and therefore we are incapable of determining where we stand.

Would you please urgently have this condition corrected since you opened the account with them and we have nobody there that we can even contact and it makes this a very undesirable condition.

Very truly yours,

NEISCO, INC.

G. A. Horvath

GAH/lr

PLAINTIFF'S EXHIBIT 11-H (IN EVIDENCE)-- LETTER FROM NEISCO,
INC. (J.J. DICKEY) TO RUGENDORF, DATED DECEMBER 18, 1969.

December 18, 1969

Mr. Irwin Rugendorf
American Revenue Corporation
420 Madison Avenue
New York, New York 10036

Dear Mr. Rugendorf:

Over the last few weeks we have submitted several weekly budgets as instructed by the New York office. In each case the budget was sent in several days ahead of the time the money was requested. As you know, these budgets are prepared upon our immediate needs for raw materials, supplies, etc., as scheduled.

We believe if the following schedule were observed it would eliminate serious problems for all concerned:

Special Account #1 - disbursement account for dyestuffs, chemicals, supplies, and direct purchases of raw materials should arrive at our bank not later than Monday in the week in which it is requested.

Special Account #2 - for Jonallen Fibers, Inc. purchases should arrive on Monday also.

Payroll monies should by all means arrive on Wednesday afternoon without fail.

We order raw materials, supplies, dyes, chemicals, etc., as governed by our need of same. With the exception of the first week's budget, the money has arrived three to four days later than requested, and this causes delays in getting our dyes, chemicals, supplies, raw materials, etc., shipped in on time. Of course, as you well know, this tends to slow down the operation, delays production and billing. This is December 18, three o'clock P. M. I have just checked with our bank and the payroll money for the week ended December 20 has not arrived. Neither has money arrived for Special #1 disbursement account. As at this time our bank has been unable to track down the money. Needless for us to tell you, yet the very knowledge by the bank that the money has not arrived is causing a very serious disturbance and unrest throughout the bank and it obviously is making itself felt throughout the mill and the community.

Since funds were promised and is being made available to us by the Fund, we are trying to regain the confidence of our suppliers, the community, and above all else our employees. These constant and continuous delays make it necessary for us to bother you several times a day which, unfortunately, makes itself known to practically everybody in the plant and is making the return to normal

December 18, 1969

Page 2

operation extremely difficult. We are making a number of telephone calls because of this situation, which could be eliminated and thereby reduce our expenses and make our time available for other work if monies arrived on time.

In regard to payroll money arriving late, we have received several warnings from the bank manager that unless they are able to credit the actual arrival of funds to our account before one o'clock on each Thursday they will be forced to refuse to pay out on Friday morning as they have been unable to credit our account at the proper time.

We feel it is our duty to bring this matter to your attention to enable you to try to obtain funds for us as requested and to permit us to discharge our obligations properly and economically as possible.

May we extend our kindest personal regards.

Very truly yours,

NEISCO, INC.

J. J. Dickey
General Manager

C. W. Goforth
Controller

PLAINTIFF'S EXHIBIT 12 (FOR IDENT.)-- DIARY OF SERVICES FOR
NEISCO, INC. PREPARED BY BALLON, STOLL & ITZLER, FROM
OCTOBER 31, 1969 TO FEBRUARY 4, 1972.
NEISCO, INC.

1969

10/31	Made and received telephone calls to and from client	7
	Attended conference with client	2 hrs
11/3	Attended conference with client	1-1/2 hrs
	Made and received telephone calls to and from client	6
	Made and received telephone calls to and from attorney for Fund	3
11/4	Made and received telephone calls to and from attorney for Fund	9
	Made and received telephone calls to and from client and his office	11
11/5	Made trip to Chicago. Attended conference with Trustee of Fund and two attorneys - with client and house counsel	13 hrs
11/6	Made and received telephone calls to and from client	5
	Made telephone calls to attorney for Fund in Detroit	3
11/5	Made and received telephone calls to and from client	2
	Prepared application and order to do business; application and restraining order; application and order extending time; application and order to borrow money; petition; Chapter XI-2 affidavit; petition, affidavit and order to retain counsel	8 hrs.
11/6	Made and received calls to and from general counsel for Fund in Chicago	2
	Made and received calls to and from client	5
11/7	Made and received calls to and from client	9
	Made and received calls to and from house counsel of client	5

attb. Ex. A for Id.
Sedg 6/27/74

NEISCO, INC.
(continued)

11/7	Attended conference with house counsel of client	1 hr
	Made and received telephone calls to and from attorney for Fund in Detroit	3
11/10	Made and received telephone calls to and from client	8
	Made and received telephone calls to and from attorney for Fund in Detroit	2
	Made telephone call to accountant for client	1
	Made telephone call to accountant for Fund	1
	Received telephone call from house counsel of debtor	1
	Received telephone call from accountant for Fund	1
11/11	Attended conference with two attorneys for Pension Fund and two accountants for Pension Fund with accountant for debtor	6 hrs
	Attended conference with client and house counsel	1-1/2 hrs
	Read prepared agreement with Fund; re-drafted same	2-1/2 hrs
	Mailed copies of new draft to two attorneys for Fund and to Florida attorney for debtor, and to client	4
11/12	Made and received telephone calls to and from client	7
	Received call from house counsel	1
11/12	Made and received telephone call to and from G. Horvath	2
	Redictated application and order authorizing borrowing of money from Pension Fund	1-1/2 hrs

NEISCO, INC.
(continued)

11/14	Received telephone call from E. Horvath	1
	Made and received telephone calls to and from client	3
	Attended conference with house counsel	1 hr
	Made and received telephone calls to and from client	2
	Made and received telephone calls to and from Fund in Chicago	2
	Made and received telephone calls to and from attorney for Fund in Detroit	2
	Attended conference with client	1 hr
	Made and received telephone calls to and from client	2
11/17	Made and received telephone calls to and from attorney for Fund	6
	Made and received telephone calls to and from client	7
	Made and received telephone calls to and from house counsel	2
	Made and received telephone calls to and from attorney for Fund in Chicago	3
11/18	Made and received telephone calls to and from client	5
	Made telephone call to attorney for Fund in Chicago	1
	Received telephone calls from attorney in Detroit	2
	Made and received telephone calls to and from attorney in Chicago	2
11/19	Made trip to Chicago with Horvath, Polish and Comptroller to Fund	10 hrs
	Made telephone calls to New York from Chicago	3

NEISCO, INC.
(continued)

11/20	Attended conference with clients, Ed Ehrenberg and Jack Polish	2 hrs
	Made and received telephone calls to and from Fund in Detroit	2
	Made and received telephone calls to and from attorney for client in Washington	3
	Made and received telephone calls to and from client	7
	Attended conference with house counsel	1 hr
	Made and received telephone calls to and from client	3
11/21	Made and received telephone calls to and from client's accountant	2
	Made and received telephone calls to and from client	11
	Sent messenger to client to deliver papers for execution	3/4 hr
	Made telephone call to attorney for Fund in Detroit	1
	Received telephone call from attorney in Detroit	1
	Received telephone call from attorney for a creditor	1
	Received calls from attorney in Chicago	3
11/24	Filed Chapter XI petition - had all accompanying orders signed	2-1/2 hrs
	Wrote letter to client re doing business order	1/2 hr
	Wrote letter to client re preparation of schedules	1 hr
	Wrote letter to client re order authorizing borrowing of money	1/2 hr
	Wrote letter to client re restraining order	1

NEISCO, INC.
(continued)

11/25	Prepared copies of balance sheet for Court	1 hr
	Received notice of Chapter XI-4 hearing	1
	Wrote letter to client re same	1
	Made and received telephone call from and to SEC	2
	Made and received telephone calls to and from client	3
	Prepared affidavit and certificate of indebtedness	1-1/2 hr
	Made telephone calls to attorney for Union	3
11/29	Made and received telephone calls to and from client	4
	Received telephone call from G. Kaslow	6
	Made telephone call to New York Telephone	2
	Dictated application and order re New York Telephone	1
12/1	Received telephone calls from client	2
	Received letter from attorney for Pension Fund	1
	Wrote letter to attorney for Pension Fund	2
	Received letter from client	1
12/2	Made and received telephone calls to and from Benjamin C. Cohen	3
	Made and received telephone calls to and from client	4
12/4	Made and received telephone calls to and from client	3
	Received telephone call from Pension Fund's countersignator	1
12/3	Received telephone calls from client	6

NEISCO, INC.
(continued)

12/3	Wrote letter to client	1
	Made and received telephone calls from telephone company	2
	Received telephone calls from Union	4
	Obtained Referee's signature on order authorizing payment of Mason's telephone bill	1/2 hr
12/4	Made telephone call to general house counsel	1
	Made telephone call to attorney for Fund in Detroit	1
	Wrote letter to Jack Polish	1
12/5	Made and received telephone calls from house counsel	2
	Received telephone calls from client	2
	Wrote letter to client	1
	Made and received telephone calls from and to attorney for creditors	3
	Made telephone call to attorney for Fund in Detroit	1
	Made telephone call to client	1
	Received telephone call from attorney for creditors	1
	Received telephone calls from accountant for debtor	2
	Made and received telephone calls to and from client	2
	Attended conference with client	1-1/2 hrs
	Received Marshal's notice of sale and hearing	1

NEISCO, INC.
(continued)

12/5	Wrote letter to Marshal	1
	Received letter from court	1
	Received affidavit of publication from Dial Press Record	1
	Received bill from Dial Press Record	1
	Wrote letter to client	1
12/9	Received telephone calls from client	3
	Received telephone call from Ad-Vel Corp.	1
	Received telephone call from Jack Polish	1
	Dictated application and order re leasing of premises	1 hr.
	Wrote letters to Referee	3
	Dictated application and order re payment of salaries and commissions	1 hr
	Wrote letter to Referee	1
	Wrote letter to client	1
	Dictated application and order re reten- tion of accountants	1 hr
	Wrote and received letter from creditor	2
12/10	Made and received telephone calls from and to client	4
	Wrote letter to IRS	1
	Wrote letter to Referee	1
	Mailed copy of orders to IRS	2
	Attended meeting with Jack Polish	1 hr
	Attended meeting at Roosevelt Hotel with creditors	2-1/2 hrs

NEISCO, INC.
(continued)

12/10	Made and received telephone calls to and from attorney for creditors	4
	Made and received telephone calls to and from house counsel for client	5
	Attended creditors' meeting	2 hrs
12/11	Made and received telephone calls to and from client	2
	Received telephone call from G. Horvath in Chicago	1
	Wrote letter to client	1
	Made and received telephone calls to and from client in Chicago	3
	Made telephone call to attorney for Fund in Chicago	1
	Recd telephone calls from house counsel	3
	Received telephone call from client in North Carolina	1
	Made and received telephone calls to and from attorney for Fund in Chicago	2
12/12	Made and received telephone calls to and from client	4
	Made and received telephone calls to and from attorney for creditors	4
12/15	Received telephone call from attorney for client	1
	Wrote and received letter from attorney for American Viscose	2
	Sent check to court reporter	1
	Forwarded copy of order	1
	Received telephone calls from client	2

NEISCO, INC.
(continued)

12/15	Made and received telephone calls to and from G. Horvath in Miami Beach	2
	Made and received telephone calls to and from Rodom, Detroit counsel fro Pension Fund	3
	Made telephone call to house counsel from Florida to New York	1
12/16	Made telephone call to client from Florida	1
12/17	Recd telephone call from client	1
12/16	Attended court hearing on indemnity	1-1/2 hrs
	Wrote letter to Referee	1
	Dictated order for employment of executives and payment of salaries	1/2 hr
	Wrote letters to client	3
	Wrote letter to attorney for Creditors' Committee	1
	Received telephone call from client	1
12/17	Prepared application and order re extension to file schedules	1/2 hr
	Wrote letter to Referee	1
	Wrote letter to client	1
	Received telephone call from client	1
	Sent telephone to Radom and Teitelbaum	2
12/18	Received telephone call from client	1
	Wrote letters to client	2
	Wrote and received letter from attorney for American Hoebsct Corp.	2
	Received letter from client	1
	Wrote letter to Employment Commission of North Carolina	1

NEISCO, INC.
(continued)

12/18	Sent to client order authorizing employment of executives	1
	Sent copies to S. Hendler and H. Miller	2
	Received telephone call from G. Horvath	1
12/22	Received call from client in Florida	1
	Made telephone call to Rodom, attorney for Fund in Detroit	1
	Received telephone call from Radom, atty. for Fund, from Detroit	1
	Received and made telephone calls to and from house counsel for client	2
	Received and made telephone calls from countersignator on checks	2
	Received and made telephone calls to and from client	4
	Received letter from Wasserman and Tate	1
12/23	Made and received telephone calls to and from client	4
	Made and received telephone calls to and from client	4
12/24	Made and received telephone calls to and from client	2
12/29	Forwarded restraining order to creditor	1
	Made and received telephone calls to and from client	4
	Completed schedules and statement of affairs	1-1/2 hrs
12/30	Seymour J. Shyman attended court hearing Adjourned first meeting	2-1/2 hrs
12/31	Dictated order re employment of executives	1/2 hr
	Wrote letters to Referee	2
	Received from and wrote letter to N.Y.C. tax department	2

E-51
NEISCO, INC.
(Continued)

1970

1/5	Call from comptroller of client in North Carolina	1
	Telephone calls from E. Horvath	2
	Telephone call from Jack Polish	1
	Dictated application and order amending schedules	1/2 hr.
	Dictated letter to Referee	1
	Made telephone call to attorney for Fund in Detroit	1
	Made telephone call to attorney for Fund in Chicago	1
1/6	Made and received telephone calls to and from House Counsel	2
	Made telephone calls to Pension Fund's attorney in Detroit	2
1/7	Made and received telephone calls to and from client	3
	Made telephone call to accountant for client	1
	Made and received telephone calls to and from client	4
	Dictated application and order to void lien	1
	Dictated letter to Referee	1
1/8	Made and received telephone calls to and from client	2
	Made and received telephone calls to and from client	2

NEISCO, INC.
(Continued)

1970

1/8	Made and received telephone calls to and from insurance company	2
1/9	Made and received telephone calls to and from client	5
	Made telephone call to attorney for Fund in Chicago	1
	Made telephone call to Rugendorf (countersignature on checks)	1
	Made and received telephone calls to and from client	4
	Made telephone call to attorney in Detroit	1
	Received telephone call from client	1
1/10	Attended Saturday meeting at NY Countersignature's office with Trustee	1
1/11	Attended Sunday conference with possible investor (Benjamin C. Cohen)	1/2 hr.
	Made telephone call to client	1
1/12	Received telephone call from G. Horvath	1
1/13	Made and received telephone calls to and from client	4
1/14	Made and received telephone calls to and from client	5
	Made telephone call to possible financing company	1
	Made and received telephone calls to and from House Counsel for client	6
	Read and analyzed leases	3 1/2 hrs.
	Received letter from client	1
	Wrote letter to attorney for fund in Detroit	1

NEISCO, INC.
(Continued)1970

1/14	Made and received telephone calls to and from client	2
1/15	Wrote letter to client	1
1/7	Made and received telephone calls to and from client	3
	Made and received telephone calls to and from accountant for client	2
1/13	Attended Court Hearing- AFM	2
1/15	Received telephone call from G. Horvath	1
	Dictated letter to Referee Babbit	1
1/16	Made and received telephone calls to and from client	2
1/19	Received letter from attorney for creditor	1
	Received telephone call from client in Florida	1
	Dictated letter to client re bill for meeting room	1
	Received telephone call from George Horvath	1
	Received and reviewed letter from Harvey Miller	1/4 hr.
	Responded to said letter	1/4 hr.
	Dictated letter to client requesting information Re pre Chapter XI operations	1
1/20	Made and received telephone calls to and from client in Florida	3

NEISCO, INC.
(Continued)

1970

1/20	Made telephone call to attorney for Fund in Detroit	1
	Received telephone call from collection agency representing 3 creditors	1
1/21	Forwarded Reporters bill to client	1
	Reviewed transcript of hearing held on 12/30/69	1/2 hr.
	Made and received telephone calls to and from Benjamin Cohen	4
	Made and received telephone calls to and from client	3
	Conference with client and Benjamin C. Cohen	1 1/2 hrs.
	Conference with client	1 hr.
	Wrote letter (long one) to attorney for Fund in Detroit	2
	Wrote letter to client	1
1/22	Received telephone call from George Horvath	1
	Received telephone call from Ernest Horvath	1
	Dictated letter to client	1
	Made and received telephone calls to and from client	2
	Made telephone calls to attorney for Fund in Detroit	2
	Made telephone call to attorney for Fund in Detroit	1
	Made telephone call to client	1
1/23	Made and received telephone calls to and from client	3

NEISCO, INC.
(Continued)

1970

1/28	Wrote letter to attorney for Fund in Detroit	1
	Wrote letter to client	2
1/29	Conference with client, Joseph Radem and Rugendorf	3
	Made telephone calls to Referee's office	2
	Made and received telephone calls to and from accountant for debtor	2
	Attended Court Hearing- AFM	1 1/2 hrs.
	Dictated letter to client	1
	Received telephone call from G. Horvath	1
1/30	Made and received telephone calls to and from client	2
	Made call to countersignator of checks	1
2/2	Made and received calls to and from E. V. Horvath	2
	Received notice from Sheriff's office	1
2/3	Made and received telephone calls to and from H. Miller	2
	Forwarded certificate of indebtedness and summary of Neisco debt to Pension Fund to Harvey R. Miller	1
	Received and wrote letter to J.J. Deskey	2
	Conference with mortgage company and client	2 hours
	Received call from accountant	1
2/3	Received letter from attorney for Fund in Chicago	1

NEISCO, INC.
(Continued)

1970

	Wrote 2 letters to attorney for Fund in Detroit	2
	Wrote letter to attorney for fund in Chicago	1
	Conference with President of client	1/2 hour
2/4	Made and received calls to and from client	2
	Received call from attorney for Fund in Detroit	1
	Made and received calls to and from Fund's countersignator	2
2/5	Made and received calls to and from client	5
	Made call to accountants for debtor	1
	Wrote letter to attorney for Fund in Detroit	1
	Prepared application and order for accountants to do audit	1 hour
	Wrote letter to Referee w/ copies to 4 others	5
	Court hearing - adjourned for meeting.	2 hours
	Made and received calls to and from client	2
2/6	Made and received calls to and from client	2
	Wrote two letters to attorney for Fund in Detroit	1/2 hour
	Wrote two letters to client	2
	Received claim from IRS	1
	Wrote letter to accountants re same	1
	Wrote letter to accountants re December operating statement	1

NEISCO, INC.
(Continued)

1970

2/9	Made and received calls to and from client	2
	Received accountants' order from court	1
	Forwarded same to accountants, attorney for FMC and attorney for Creditors' Committee	3
2/10	Received letter from client	1
	Made and received calls to and from House Counsel of client	2
	Made and received calls to and from counter- signator for Fund	2
	Wrote letter to accountant	1
2/11	Made and received calls to and from client	5
	Received call from accountant for Fund	1
	Wrote letter to Rugendorf	1
	Received call from client	1
	Wrote letter to client	1
2/12	Made and received calls to and from client	3
	Received letter from accountants re interest	1
	Received call from accountant	1
2/13	Received call from Joseph Radem (Detroit)	1
	Made call to accountant for debtor	1
	Conference with client	1 hour
2/17	Wrote letter to client re Court Reporter's bill	1
2/24	Meeting with client and Joe Radem	1 1/2 hr.

	Court hearing - AFM	1 1/2 hrs.
	Filed January Audit Report	1
	Mailed check to Court Reporter	1
3/2	Wrote letter to accountant	1
3/3	Received proof of debt from N.Y.C.	1
3/5	Received and wrote letter from and to Furst & Furst	2
	Received and reviewed minutes of Court: Hearing	1 hour
3/7	Received and wrote letter from and to attorney for FMC	2
	Wrote letter to Joe Radem	1
3/9	Wrote letter to Wasserman & Tatem	1
	Received call from G. Horvath	1
3/12	Made and Received calls to and from client	5
	Wrote letter to client	1
	Reviewed minutes 2/24/70	1 1/2 hrs.
3/17	Reviewed objection to Federal Government's claim	1 hour
	Dictated motion papers re amendment of schedules	1 hour
	Wrote letter to Referee	2
	Dictated motion objecting to claim of IRS	1
3/18	Received call from client in California	1
3/20	Made and received calls to and from Radem in Detroit	2
	Made and received calls to and from client	6
3/21	Prepared February operating report for filing	1
	Wrote letter to client	1

NEISCO, INC.
(Continued)

1970

3/23	Made and received calls to and from client in Florida	3
	Made calls to attorney for Fund in Detroit	2
	Received calls from client	2
	Made and received calls to and from Bill Glatgen, attorney GAC	2
3/24	Meeting w/ FEMB & Radem re formulation of Plan	1 hour
	Court hearing - AFM	2 hours
2/25	Wrote and received letter to and from G. Horvath	2
	Made and received calls to and from client	3
3/26	Conference with George Horvath, Jack Polish, Racine & FEMB	2 hours
	Made call to Joseph Radem	1
	Made and received calls to and from Radem in Detroit	2
	Made and received calls to and from client	2
3/27	Made and received calls to and from client	3
	Drafted proposal to Pension Fund	3 hours
3/31	Letter to client re Court Reporter's bill	1
	Received call from client	1
	Wrote letter to client	1
3/31	Made and received calls to and from client	3
	Received letter from Radem	1
4/2	Made and received calls to and from client	3

NEISCO, INC.
(Continued)

1970

	Received letter from client	1
	Conference with client	1 1/2 hrs.
	Made and received calls to and from attorney for Creditors' Committee	2
4/6	Conference - client w/ Rodan & partner, Matheson, Sol Eisenrod, Irving Revendorf & Joseph Radem	3 hours
	Made and received calls to and from attorney for Creditors' Committee	3
	Made and received calls to and from client	3
4/7	Made and received calls to and from client	3
	Conference with client	1 1/2 hrs.
	Meeting of Creditors' Committee	2 hours
4/8	Made and received calls to and from client	3
	Conference with client	3 hours
	Made and received calls to and from attorney for Creditors' Committee	2
4/9	Made and received calls to and from client	2
	Made calls to Detroit to Joseph Radem	2
	Court hearing - AFM - motion to amend schedule - motion to reduce claim of IRS	2 hours
	Received call from client	1
	Received and made calls from to Sol Eisenrod	2
4/10	Made and received calls to and from client	3
	Made Call to Radem in Detroit	

NEISCO, INC.
(Continued)

1970

4/3	Made and received calls to and from client (Ernest Horvath)	3
	Conference with Ernest Horvath	1 hr.
	Made call to Joseph Radem in Detroit	1
	Made call to George Horvath	1
	Received call from George Horvath	1
4/14	Received call from Joseph Radem in Chicago	1
	Made and received calls to and from attorney for Creditors' Committee	3
	Received call from George A. Horvath	1
	Wrote letter to Sol Eisenrod	1
4/15	Received call from George Horvath	1
	Received copy of amended claim of U.S.A.	1
	Attended Creditors' Committee Meeting	1 1/2 hrs.
	Received letter from accountant for debtor	1
	Received call from George A. Horvath	1
	Made calls to E.V. Horvath	2
	Made call to Radem in Detroit	1
4/16	Received and made calls to and from E.V. Horvath	3
	Appeared in court before Referee	1 1/2 hrs.
	Conference with representative of IRS	1 hour
	Made and received calls to and from E. V. Horvath	2
	Made and received calls to and from George A. Horvath	2

NEISCO, INC.
(Continued)

1970

4/17	Made and received calls to and from Florida to G. Horvath	2
	Made call to Joseph Radem in Detroit	1
	Made call to attorney for Creditors' Committee	1
	Made and received calls to and from G. A. Horvath	2
	Made calls to Detroit to Joseph Radem	2
4/20	Wrote letter to client	1
	Reviewed minutes of hearing on 4/9/70	1 hour
	Made and received calls to and from Eisenrod	4
	Received call from Radem	1
	Conference with Radem & Eisenrod	1 1/2 hrs.
	Made call to attorney for largest creditor	1
	Made and received calls to and from E. V. Horvath	2
	Made and received calls to and from Alech	2
4/21	Made and received calls to and from client	3
	Conference with client	1 1/2 hrs.
	Dictated letter to Radem and dictated prepared agreement of settlement	2 hours
	Made call to Radem in Detroit	1
	Made call to Eisenrod	1
	Redrafted letter and memo to Radem and Eisenrod	1 hour

NEISCO, INC.
(Continued)

1970

4/22	Wrote and received letter from and to S.B. employment	2
4/23	Made and received calls to and from George A. Horvath	2
4/24	Made and received calls to and from client	5
	Made call to Joseph Radem in Detroit	1
4/27	Made and received calls to and from G. Horvath	3
	Made call to Sol Eisenrod	1
4/28	Made and received calls to and from G. Horvath	3
	Made and received calls to and from Sol Eisenrod	2
	Made call to Radem in Detroit	1
	Made and received calls to and from G. Horvath	2
4/29	Made and received calls to and from client (G. Horvath	2
	Received calls from E.V. Horvath	3
4/30	Received call from G. Horvath	1
	Conference with G. Horvath	1 hour
	Conference with E. Horvath	3/4 hr.
5/1	Received and reviewed operating state- ment for March	1 hr.
	Forwarded to client for verification	1
	Wrote letter to client	1
	Filed affidavit of publication with Referee	1

NEISCO, INC.
(Continued)1970

5/5/70	Conference with client	1 1/2 hrs.
5/6	Received letter from creditor	1
	Wrote letter to attorney for Creditors' Committee	2
	Received copy of proof of claim from South Carolina	1
	Received call from client	1
	Made and received calls to and from Radem in Detroit	2
	Made and received calls to and from client	7
	Made call to Eisenrod	1
5/7	Made and received calls to and from G. Horvath	3
	Received call from E. Horvath	1
	Wrote letter to S. Eisenrod	1
	Made call to Sol Eisenrod	1
5/8	Made and received calls to and from client (G. Horvath)	5
	Made call to Eisenrod	1
5/11	Made and received calls to and from E. Horvath	2
	Received call from G. Horvath	1
	Made and received calls to and from Philadelphia	3
	Made call to Eisenrod	1
	Received letter from Power Co.	1

NEISCO, INC.
(Continued)1970

	Worked on objection to claims in Clerk's office, Bankruptcy Court	3 hours
5/12	Received and reviewed copy of letter from Newett & Newett	2 hours
	Court hearing - Creditors' Meeting	1 1/2 hrs.
	Wrote letter to Wasserman & Tatem	1
5/13	Made and received calls to and from George Horvath	3
	Made and received calls to and from E. Horvath	2
5/14	Received and wrote letter from and to Carolina Paper Co.	2
	Received and wrote letter from and to Godfrey Conveyor Co.	2
5/15	Conference with Klari Erdoss	1 1/4 hrs.
	Received letter from N.C. Tax	1
5/18	Received call from client	1
	Made and received calls to and from Eisenrod	2
	Received claim of Data Systems - filed w/ Court	2
	Wrote letter to U.S. Attorney	1
5/20	Made and received calls to and from client	3
	Made and received calls to and from Eisenrod	2
	Received call from Joseph Radem from Detroit	1
	Made call to client	1

E-66
NEISCO, INC.
(Continued)

1970

5/21	Made and received calls to and from client	5
	Received call from Eisenrod	1
	Conference with client	1 hour
5/22	Wrote letter to Fairchild Publications	1
5/25	Wrote letter to U.S. attorney	1
5/26	Received call from Radem in Detroit	1
	Made and received calls to and from client	5
	Made and received calls to and from E. Horvath	2
5/28	Made and received calls to and from client	5
5/29	Made and received calls to and from representative of Pension Fund (Rugendorf)	2
	Made and received calls to and from client	3
	Made and received calls to and from Radem	2
	Made and received calls to and from E. V. Horvath	3
	Made and received calls to and from client	3
6/1	Received call from Radem in Chicago	1
	Made calls to G.A. Horvath in Florida	2
	Received calls from G.A. Horvath	2
	Wrote letter to Court Reporter	1
6/4	Made and received calls to and from client	2

NEISCO, INC.
(Continued)

1970

6/8	Wrote letter to Court Reporter	1
	Forwarded acceptance to attorney for Creditors' Committee	2
6/9	Made and received calls to and from client	2
	Worked on objection to claims	4 hours
	Conference with Joseph Radem, Sol Eisenrod & Irving Rugendorf	2 hours
	Conference with Joseph Radem	1 hour
	Made and received calls to and from Sol Eisenrod	3
	Made and received calls to and from Joseph Radem	3
	Made call to attorney for Trustee	1
6/10	Made and received telephone calls to and from client	11
	Made and received telephone calls to and from Sol Eisenrod	5
	Conference with attorney for Creditors' Committee	3/4 hrs.
	Received Consents of Creditors to Claim	
6/11	Made and received telephone calls to and from clients	5
	Drafted 2 memos for Fund	2 hours
	Received consent	1
	Forwarded to Court	1
6/15	Received call from Radem	1
	Made call to Radem	1
6/16	Received call from Eisenrod	1

NEISCO, INC.
(Continued)

1970

	Wrote letter to George Horvath	1
	Wrote letter to E.V. Horvath	1
	Received and wrote letter from and to attorney for claimant	2
6/16	Mailed out notices of reducing claims to creditors	2 hours
6/17	Worked on objections to claims	3 hours
	Received telephone call from Radom in Detroit	1
	Made and received telephone calls to and from client	2
	Wrote letter to client re: April operating statement	1
6/18	Received telephone call from client	1
	Made and received telephone calls to and from Sol Eisenrod	2
6/19	Made and received telephone calls to and from Radom	2
	Made and received telephone calls to and from client	3
6/23	Spoke to Fred Meekins, Esq. re: claim No. 75 - Advell Corp.	1/2 hour
	Wrote letter to client	1
6/24	Worked on objections to claims	3 hours
	Received telephone calls from 3 creditors re: objections to claims	1 hour
6/26	Attended conference at Sol Eisenrod's office with him, I. Rugendorf, G. Horvath and Jack Polish	2 hours
6/30	Made and received telephone calls to and from Sol Eisenrod	3
	Made and received telephone calls to client	3

NEISCO, INC.
(Continued)

1970

6/30

Made and received telephone calls to and
from Sol Eisenrod

4

Made and received telephone calls to and
from client

3

Made telephone call to Joseph Radom in
Detroit

1

NEISCO, INC.
(Continued)

7/1	Calls to and from Sol Evenrod	3
	Made and received telephone calls to and from E. Horvath	4
	Attended hearing objecting to claim	2 hours
	Attended court hearing - adjourned first meeting	1 hour
7/2	Wrote letter to client	1
	Wrote letter to U.S. Attorney	1
7/7	Prepared May statement	1
	Wrote letter to client	1
7/13	Wrote letters and spoke to several creditors	3 hours
7/15	Wrote letter to Afco	1
7/24	Received and wrote letters from and to attorney for creditor	2
7/27	Worked on objections to claim	2 hours
7/28	Attended court hearing - adjourned first meeting of creditors	2 hours
	Made and received telephone calls to and from client	4
	Wrote letter to client	1
	Wrote letter to U.S. Attorney	1
	Wrote letter to Accountant	1
	Attended hearing re: objections to claims	3 hours
8/3	Attended meeting with Jack Polish, Carl Schaeffer, and Larry Vogel re: contracts with Fund	3-1/2 hrs.
8/5	Made telephone call to client	1
	Wrote letter to Carl Schaeffer	1

NEISCO, INC.
(Continued)

8/6	Attended hearing before Referee Babitt re: objections to claim	2 hours
	Attended court hearing - adjourned first meeting	3 hours
8/13	Received and made telephone calls from and to Jack Polish	2
	Made and received telephone calls to and from Carl Schaeffer	2
8/31	Reviewed July operating statement	1 hour
	Prepared verification and forwarded to client for signature	1
9/2	Wrote letter to Jack London	1
9/3	Attended court hearing	1 hour
9/4	Prepared order re: sale of equipment	2 hours
9/10	Wrote letter to attorney for Masmo and delivered Neisco reort	1
	Attended meeting with Jack Polish	1
	Received telephone call from Jack London	1
9/14	Received telephone call from G. Horvath	1
9/16	Attended meeting with client at office of Manes, Sturin, Roth & Fisher	2-1/2 hrs.
	Dictated answers to petition of U.S.A. to reduce salaries	1 hour
9/16	Received and reviewed answer to interrogatories of U.S.A.	1 hour
	Received telephone call from U.S. Attorney	1
	Made telephone call to house counsel for debtor	1
9/17	Attended court appearance - adjourned first meeting; opposed application of U.S.A. joined in by Pension Fund to dismiss Horvaths and close N.Y. office; full time on the merits; three witnesses - petition dismissed	7 hours

NEISCO, INC.
(Continued)

9/18	Letter to Wasserman & Taten, re: attendance at next hearing	1
9/8	Attended court hearing	2 hours
9/18	Received and made telephone calls from and to client	2
9/19	Wrote letter to accountants for DIP	1
	Wrote letters to U.S. attorney	2
	Wrote letter to client	1
	Wrote letter to client re: Afco Financing order	1
	Received telephone call from client	1
	Made telephone call to client's Florida attorney	1
	Received telephone call from Jack Polish	1
	Received telephone call from Jack London	1
	Received telephone call from attorney for CIBA	1
9/22	Wrote letter to court reporter	1
9/25	Wrote letter to Horvath	1
	Prepared order to sell equipment	2 hours
10/6	Mailed copies of indemnity order to all interested parties	6
	Received and wrote letters from and to attorney for Indian Head	2
10/7	Made and received telephone calls to and from Eisenrod	2
	Received telephone call from client	1
	Made telephone call to attorney for Pension Fund	1
	Received telephone call from attorney for Horvath	1

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NEISCO, INC.
(Continued)

10/9	Forwarded court reporter's statement to client for payment with covering letter re: transcript	1
	Received telephone call from client	1
10/12	Received telephone call from client	1
	Made telephone call to attorney for Pension Fund	1
10/13	Received telephone call from Larry Vogel	1
	Made telephone call to Jack Polish	1
	Received telephone call from E. Horvath	1
	Made and received telephone calls to and from Rugendorf	2
	Received telephone call from Paul Douglas	1
10/14	Attended court hearing - adjourned first meeting	2 hours
	Received and made telephone calls from and to client	2
10/15	Received and reviewed amended proof of debt of IRS	1/4 hour
	Wrote letter to client re: above	1
10/16	Made and received telephone calls to and from G. Horvath	4
	Made telephone call to Sol Eisenrod	1
	Made and received telephone calls to and from Eisenrod	2
	Wrote letter to client re: court reporter's bill	1
	Wrote letter to accountant re: required court appearance	1
	Received telephone calls from G. Horvath	4
	Dictated proposal re: reduction of overhead	1 hour
	Wrote letter to client	1

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NEISCO, INC.
(Continued)

10/20	Attended meeting with client	1 hour
	Attended meeting with attorneys for Pension Fund and with client at court	1 hour
	Attended court hearing - adjourned first meeting	1-1/2 hrs.
	Made and received telephone calls to and from client	4
10/21	Made and received telephone calls to and from client	3
	Made and received telephone calls to and from Rugendorf	2
	Wrote letter to U.S. Attorney re: tax claim stipulation with copies to all interested parties	6
	Wrote letter to client re: court reporter's bill	1
10/23	Attended conference with client	1-1/2 hrs.
10/24	Prepared September operating statement for verification	1
	Wrote letter to client	1
	Wrote letter to court reporter	1
10/26	Wrote letters to client re: court reporter's bill	2
10/27	Received telephone call from G. Horvath	2
10/28	Filed September operating statement with court	1
	Wrote letter to client re: check for court reporter	1
10/30	Wrote letter to counsel for creditors' committee	1
11/3	Received telephone call from client	1

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NEISCO, INC.
(Continued)

11/2	Received telephone call from client	1
	Made telephone call to Carl Schaeffer	1
11/5	Made and received telephone calls to and from client	2
11/6	Wrote letter to client	1
11/9	Wrote letter to Susan Frieman re: offer to IRS in payment of claim	1
	Made and received telephone calls to and from Eisenrod	3
	Made and received telephone calls to and from Eisenrod	3
	Made telephone call to client	1
11/11	Received telephone call from G. Horvath	1
11/12	Received letter from Newett & Newett	1
	Dictated letter to IRS with information	1/2 hour
11/17	Received telephone call from client	1
11/19	Made and received telephone calls to and from client	6
	Received telephone call from Larry Vogel	1
	Attended court hearing - adjourned first meeting	2 hours
12/14	Received and wrote letters to and from Furst & Furst	2
12/21	Received telephone call from Ernest Horvath	1
12/22	Attended court hearing - adjourned first meeting	1-1/2 hrs.
	Made and received telephone calls to and from client	2
12/23	Wrote letter to client re: verification of November operating statement	1

NEISCO, INC.
(continued)1971

1/13	Wrote and received letter from Southern Latex	2
1/19	Attended court hearing - adjourned first meeting	2 hrs.
	Received telephone call from G. Horvath	1
1/27	Received telephone call from G. Horvath	1
	Received telephone call from J. Polish	1
	Made and received telephone calls from North Carolina attorney	2
	Wrote letter to Isaacs	1
2/16	Attended court hearing - adjourned first meeting	2-1/2 hrs
	Made and received telephone calls from G. Horvath	2
	Reviewed objections to claims - spoke to attorney for Steel Heddle claimant	3 hrs
3/1	Received call from G. Horvath	1
3/9	Wrote letter to Wasserman and Tate	1
3/17	Received and reviewed January 1971 operating statement	1 hr
	Wrote letter to claimant	1
	Received letter from accountant for debtor	1
3/19	Mailed January statement to court for filing	1
	Received and wrote letter to Jon Allen Fibers	2
	Wrote letter to client	1
3/20	Received letter from attorney for Pension Fund	1

NEISCO, INC.
(continued)

3/30	Wrote letter to client re reporter's bill	1
	Attended court hearing - adjourned first meeting	1-1/2 hrs
	Reviewed and approved draft of IRS stipulation	1 hr
	Wrote and received letter from Southern Latex Corporation	2
	Wrote letter to attorney for Pension Fund	1
	Wrote letter to counsel to Creditors' Committee	1
	Received call from E. Horvath	1
	Received call from G. Horvath	1
4/6	Wrote letter to Regional Counsel of IRS	1
5/27	Made and received telephone calls from George Horvath	2
	Wrote letter to client	1
5/28	Prepared application and proposed order authorizing financing of insurance payments	1 hr.
	Wrote letter to Referee	1
6/1	Received proof of claim of National Carloading Corp.	1
	Forwarded same to Referee	1
6/2	Received and reviewed order authorizing premium financing	1/2 hr
	Wrote letter to client	1
6/8	Received call from client	1
	Wrote letter to client	1
6/9	Received additional consents from attorneys for Creditors' Committee	10

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NEISCO, INC.
(continued)

6/9	Received letter from debtor	1
	Prepared application and proposed order for authorization to finance premiums for insurance policies	1 hr.
	Wrote letter to Referee	1
6/10	Received telephone call from Geo. Horvath	1
6/11	Received order from court re insurance premiums	1
	Forwarded same to client	1
	Received and wrote letter to Standard Brands	2
6/21	Received copy of claim of City of N.Y. Claim amends prior claim and reduces to 0	1
6/24	Received additional proof of claim from IRS	1
	Wrote letter to debtor	1
	Wrote letter to attorney for Pension Fund	1
7/7	Wrote letter to client	1
	Received call from client	1
7/8	Attended adjourned first meeting of creditors	1-1/2 hrs
	Received telephone call from client	1
	Received telephone call from Ernest Horvath	1
7/12	Received check from court reporter	1
	Forwarded same to court reporter	1
7/14	Received April report	1
	Prepared verification	1
	Mailed same to client	1

NEISCO, INC.
(continued)

7/14	Received telephone call from attorney for Pension Fund	1
	Received and wrote letter to client re sales of equipment	2
7/16	Received telephone call from client	1
7/19	Forwarded operating statement for April to Referee	1
7/26	Received consent from the Trustee in Bankruptcy of George Horvath	1
	Wrote letter to George Horvath	1
7/28	Received letter from Duke Power Co.	1
	Attended adjourned first meeting of creditors	2 hrs.
	Attended court hearing	2 hrs.
8/2	Received letter from attorney for Jonallen	1
	Received acceptance from The Advel Corp.	1
8/4	Received acceptance of arrangement from Cargill	1
8/12	Received May report and studied same	1/2 hr
	Prepared verification and forwarded to client	1
8/13	Forwarded May operating statement to Referee	1
8/25	Received photostatic copy of order authorizing the borrowing of funds	1
	Wrote letter to attorney of Bank in Chicago re laon	1
	Wrote letter to attorney for Pension Fund re minutes authorizing loan	1
8/30	Received telephone call from client in Florida	1

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NEISCO, INC.
(continued)

9/2	Received bill from court reporter	1
	Wrote letter to client	1
	Attended first meeting of creditors	2-1/2 hrs
9/7	Reviewed June 1971 Operating Statement	1/2 hr
	Prepared verification	1/2 hr
	Wrote letter to client	1
	Made telephone call to Creditors' Committee counsel	1
	Received and made telephone call to attorney for Creditors' Committee	2
9/14	Wrote letter to court reporter	1
	Forwarded May and June 1971 operating statements to court	2
9/27	Review of July operating statement	1/2 hr
	Wrote letter to client	1
9/22	Wrote and received letter to creditor re status	2
	Received telephone call from Geo. Horvath	1
9/23	Wrote and received letter from creditor	2
	Received statement from reporter	1
	Forwarded same to client	1
10/4	Received and wrote letter to attorney for landlord	2
	Received and wrote letter to attorney for creditor	2
	Received check from client	1
	Forwarded same to court reporter	1

NEISCO, INC.
(continued)

10/4	Received telephone call from Geo. Horvath	1
	Received telephone call from attorney for creditor	1
10/5	Attended Creditors' meeting at Courthouse	2-1/2 hrs
10/6	Made and received telephone calls from Geo. Horvath	2
	Wrote letter to Referee filing July operating statement	1
10/14	Reviewed Report for August 1971	1/2 hr
	Wrote letter to client	1
10/20	Received telephone call from client	1
	Made telephone call to client	1
	Made and received telephone call to attys. for Pension Fund	2
10/21	Received telephone call from Geo. Horvath	1
	Received August operating statement and forwarded same to Referee	2
10/26	Made and received telephone call to attys. for Geo. Horvath	2
11/3	Attended court hearing	2 hrs.
	Made and received telephone calls from attorneys for Horvath	3
11/10	Received letter from client	1
	Dictated application and proposed order authorizing premium financing agreement	1/2 hr
	Wrote letter to client	1
	Wrote letter to Referee	1
	Wrote letter to client	1
	Wrote letter to Geo. Horvath re transcripts	1
	Received telephone call from Geo. Horvath	1

NEISCO, INC.
(continued)

11/12	Wrote letter to client	1
11/17	Made and received telephone calls from client	2
	Made telephone call to U.S. Attorney	1
	Wrote letter to client	1
	Received telephone call from U.S. attorney	1
	Made telephone call to client	1
11/18	Wrote and received letter from attorney for creditor	2
11/19	Received operating statement for Sept. 1971	1/2 hr
	Wrote letter to debtor	1
11/23	Wrote letter to court reporter	1
12/3	Reviewed file	4 hrs.
12/7	Reviewed October operating statement	1/2 hr
	Prepared verification and mailed same to client	2
12/9	Received telephone call from Geo. Horvath	1
	Reviewed claims	1 hr.
12/13	Received operating statement and forwarded the same for filing	2
	Examined claims	2 hrs.
12/17	Wrote letter to client	1
12/23	Received telephone call from client	1
	Prepared copies of transcript of hearings and mailed same to client	2
12/24	Received telephone call from Ernest Horvath	1
12/28	Prepared application and proposed order authorizing premium finance agreement	1/2 hr

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NEISCO, INC.

12/28	Received letter from client	1/2 hr
	Wrote letter to Referee-	1
	Received letter from client	1
	Wrote letter to court reporter	1
12/30	Wrote letter to client	1

NEISCO, INC.
(continued)

1972

1/3	Received telephone calls from attorney for Pension Fund	3
	Made long distance telephone call to Geo. Horvath	1/2 hr
	Received telephone call from G. Horvath	1/4 hr
1/4	Attended court hearing	1-1/2 hrs
1/17	Wrote letters to client	3
1/18	Mailed 11/17 operating statement to Referee	1
1/19	Received letter from client	1
	Made telephone call to client	1
1/25	Received letter from Debtor in Possession re purchase of machinery	1
	Dictated proposed order authorizing purchase of machinery	1/2 hr
	Wrote letter to Referee	1
	Wrote letter to client	1
1/27	Received telephone call from Referee's office	1
1/28	Wrote letter to client	1
	Wrote letter to attorney for Creditors' Committee	1
2/2	Attended court hearing re sale of Masmo stock and insurance policies and adjourned 1st meeting of creditors	8 hrs
	Wrote letter to Referee in Bankruptcy	1
	Received telephone call from attorneys for Creditors' Committee	1
2/4	Received order authorizing purchase of shear	1
	Forwarded same to client	1

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PLAINTIFF'S EXHIBIT 13 (IN EVIDENCE)-- LETTER FROM ITZLER TO
JOSEPH TEITELBAUM, ESQ., RE: NEISCO, INC., NOVEMBER 24, 1969.

November 24, 1969

Joseph Teitelbaum, Esq.
39 South La Salle Street
Chicago, Illinois

Re: Neisco, Inc.

Dear Mr. Teitelbaum:

The above captioned debtor filed its petition for an arrangement today in the United States District Court for the Southern District of New York.

In addition to the various usual orders signed by the Referee, an order authorizing the debtor to borrow money up to the sum of \$1,650,000 was made and entered. You have seen a draft of that order.

We enclose herewith a conformed copy of the order signed by Referee Babitt.

If you have any questions with regard thereto, please let me know.

Sincerely,

RSI/s
Enclosure

Ronald S. Itzler

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PLAINTIFF'S EXHIBIT 14 (IN EVIDENCE)-- LETTER FROM ITZLER TO
RADOM, RE: NEISCO, INC., DATED NOVEMBER 24, 1969.

November 24, 1969

Joseph Radom, Esq.
1643 First National Bldg.
Detroit, Michigan

Re: Neisco, Inc.

Dear Mr. Radom:

A petition for an arrangement for Neisco, Inc. was filed today in the United States District Court for the Southern District of New York. The matter was referred to the Honorable Roy Babitt, Referee in Bankruptcy.

In addition to the usual orders made and entered in a Chapter XI proceeding, Referee Babitt made and entered an order authorizing the debtor to borrow money from the Pension Fund up to the amount of \$1,650,000. You have seen a draft of the said order and the application in support thereof.

We enclose herewith a conformed copy of said order and an application in support thereof.

If you have any questions with regard to this, do not hesitate to let the undersigned know. We have informed Neisco, Inc. how to comply with the provisions of the order and hopefully, there will be full compliance therewith.

Very truly yours,

RSI/s
Enclosure

Ronald S. Itzler

PLAINTIFF'S EXHIBIT 15 (IN EVIDENCE)-- PROPOSED AGREEMENT
BETWEEN CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION
FUND AND NEISCO, INC., DATED JULY, 1970.

AGREEMENT made this day of July, 1970 by and between
THE CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
(hereinafter referred to as "the Fund") and NEISCO, INC.,
Debtor-in-Possession (hereinafter referred to as "Neisco").

W I T N E S S E T H :

WHEREAS, Neisco filed a Petition For An Arrangement pur-
suant to and under Chapter XI of the Bankruptcy Act, as amended,
in the United States District Court for the Southern District of
New York on November 24, 1969; and

WHEREAS, said Petition For An Arrangement is presently
pending before the Honorable Roy Babitt, Referee in Bankruptcy;
and

WHEREAS, Neisco has filed with the United States District
Court for the Southern District of New York its proposed Arrange-
ment providing for the payment of twelve and one-half (12-1/2%)
percent in cash to all general unsecured creditors; and

WHEREAS, the statutory requisite majority in number and
amount of general unsecured creditors have not yet accepted said
Arrangement as required by the provisions of the Bankruptcy Act,
as amended; and

WHEREAS, the Fund has loaned to Neisco, pursuant to an
order of the Honorable Roy Babitt, Referee in Bankruptcy, a sum
in excess of \$50,000; and

WHEREAS, the Fund is desirous of purchasing an amount of the capital stock of Neisco from its Treasury equal to ninety (90%) percent of the then issued and outstanding common stock of Neisco; and

WHEREAS, the Fund is willing to capitalize \$50,000 of the monies heretofore loaned by it to Neisco in consideration of the issuance to it of the aforementioned shares of stock.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED AND OTHER VALUABLE CONSIDERATION, IT IS HEREBY MUTUALLY COVENANTED AND AGREED BY THE RESPECTIVE PARTIES HERETO, AS FOLLOWS:

FIRST: Neisco shall take such steps as may be necessary to obtain an Order of Confirmation of its Arrangement filed in its proceedings for an arrangement at the earliest possible date.

SECOND: The Fund shall purchase from Neisco and Neisco shall sell, transfer, convey and deliver to the Fund, shares of its common from its Treasury, which shares, after issuance, shall constitute at least ninety (90%) percent of the then issued and outstanding shares of the common stock of Neisco.

THIRD: In consideration of the aforesaid sale, conveyance, transfer and delivery the Fund shall on the closing date (hereinafter defined) deliver to Neisco, Wasserman & Taten, CPAs, accountants to Neisco, and Leinwand, Maron & Hendler, attorneys for the Creditors' Committee of Neisco, such document

or documents as may reasonably be necessary to effectuate the capitalization of \$50,000 of the funds heretofore loaned by the Fund to Neisco as debtor-in-possession pursuant to an order of the Honorable Roy Babitt, Referee in Bankruptcy, made and entered in the proceedings for an arrangement of Neisco on February 1970.

FOURTH: On the terms and subject to the conditions of this agreement, on the closing date, Neisco will convey, transfer and deliver to the Fund certificates representing the capital stock of Neisco described in paragraph "SECOND" hereof, which certificates shall be "original issue" certificates.

FIFTH: The "closing date" as that term is used herein, shall be ten (10) days after the date and execution hereof by all parties.

SIXTH: In the event an order confirming said Arrangement is not granted and Neisco is adjudicated a bankrupt because said plan has not been accepted by the statutory requisite majority of creditors in number and amount pursuant to the provisions of Chapter XI of the Bankruptcy Act, or a person or persons shall successfully interpose specifications of objections to Neisco's discharge in bankruptcy, or Neisco is unable to satisfactorily adjust the claim of the District Director of Internal Revenue filed in said Proceedings For An Arrangement, then the aforesaid purchase of stock and concomitant capitalization of loan shall be rescinded and the transaction shall become a nullity.

SEVENTH: When called upon by Neisco, the Fund shall deliver to the Court appointed distributing agent in the Proceedings for an Arrangement of Neisco, the funds required to confirm the Arrangement in said proceedings, including but not limited to the funds necessary for dividends to general unsecured creditors, administration expenses of the proceedings and payments required by taxing authorities. The Fund shall cause its duly authorized representatives to execute such documents and make such court appearances as shall be required for the confirmation of the Arrangement.

EIGHTH: If any provision of this agreement shall contravene or be invalid under the laws of the United States, or any state, it is agreed that such contravention or invalidity shall not invalidate the whole agreement but it shall be construed as if not containing the particular provision or provisions held to be invalid.

NINTH: The provisions of this agreement shall be construed under and pursuant to the laws of the State of New York and said laws shall be applicable to any controversy surrounding this agreement.

TENTH: The terms, covenants and conditions hereinafter contained shall be binding upon the parties, their successors, heir, legal representatives and assigns, and may not be changed, altered or modified except upon the express written consent of all of the parties hereto.

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IN WITNESS WHEREOF, we have hereunto set our hands and
seals the day, year and month first above written.

THE CENTRAL STATES SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND

BY: _____

NEISCO, INC., Debtor-in-Possession

By: _____

PLAINTIFF'S EXHIBIT 16 (IN EVIDENCE)-- LETTER FROM ITZLER TO
LAURENCE VOGEL, ESQ., RE: NEISCO, INC., DATED JULY 27, 1970.

July 27, 1970

Laurence Vogel, Esq.
Schaeffer, Kahn & Dale, Esqs.
1501 Broadway
New York, New York

Re: Neisco, Inc.

Dear Mr. Vogel:

We enclose herewith completed drafts of three
agreements as follows:

1. Agreement between the Fund and Neisco.
2. Agreement between Neisco, Horvath and the
Fund.
3. Agreement between the Fund, Montmartre and
4815.

These agreements do not contain all of the items
specifically agreed upon among the parties. I wish that
you would call me upon your receipt and review of these
agreements to discuss the items which were left out and
the reasons therefor.

F [It is imperative that we get moving on the execu-
tion of these agreements, since the continued existence of
Neisco depends upon our confirming a plan. The confirma-
tion of the plan, of course, depends upon the execution of
these agreements.] F

BEST COPY AVAILABLE

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Laurence Vogel, Esq.
July 27, 1970
Page -2-

If you have any questions, please call me. Time
is of the essence.

Very truly yours,

RSI/s
Enclosures

Ronald S. Itzler

By Hand

cc:

Mr. George Horvath

PLAINTIFF'S EXHIBIT 17 (FOR IDENT.) -- EXCERPTS OF TRAN-
SCRIPTS OF PROCEEDINGS BEFORE HON. ROY BABBITT, REFEREE IN
BANKRUPTCY. DATED FROM FEBRUARY 24, 1970 TO JANUARY 19, 1972.
February 24, 1970

MR. RADOM: Neisco has been involved, as you know, in financial trouble for a long time and operations had been on the downbeat by reason of lack of capital for a number of months prior to November 24th, and the trustees of the Pension Fund were faced at that time with a decision. That decision was whether to try to assist the rehabilitation of Neisco or let it go down the drain.

THE REFEREE: Why are they interested in Neisco? Its employees are not on Neisco's payroll as I understand Mr. Itzler last.

MR. MILLER: Its members. You said its employees.

THE REFEREE: Its members.

I could understand where a company has a lot of employees in a union and the union doesn't want the place to be adjudicated; they want it to be kept alive so their members could be employed.

MR. RADOM: In this particular instance, as far as the Pension Fund of the Teamster group is concerned, it does not relate itself to the Teamsters in and of themselves because I think there may be some conflict of interest there. They do have large sums of money available for investment.

THE REFEREE: Why Neisco?

MR. RADOM: This dates back.

THE REFEREE: Whoever invested in losing propositions? I thought everyone invested in things that look good.

MR. RADOM: The history of finance companies, banks indicate that many loans have gone sour.

February 24, 1970
(Continued)

THE REFEREE: What will you do with your people if this is adjudicated and there is no money, how will you tell your people? Your pensioners and so on, don't they care?

MR. RADOM: They do care, and that was one of the reasons which impelled the trustees in November to provide an additional infusion of capital. If this is your concern, it's been our concern, too.

THE REFEREE: It's not that it's my concern in a vacuum. I am must somewhat surprised that a pension fund would lend huge sums of money to a company with which it has no connection for investment purposes. This is a losing company. It has been. You yourself acknowledged it.

MR. RADOM: But the loan, however, dates back for several years now.

THE REFEREE: What will you tell your people if there is an adjudication? Doesn't your rank and file pensioners care?

MR. RADOM: They do care because it is not incumbent upon the trustees to act imprudently.

THE REFEREE: This could hardly be classified as prudent, could it?

MR. RADOM: If we will limit ourselves, your Honor, to what happened in November, I would be very delighted to discuss the matter with you. What happened prior to the time I can't tell you.

THE REFEREE: You have \$1.5 million that they borrowed recently.

February 24, 1970
(Continued)

MR. RADOM: That's right.

THE REFEREE: That's a lot of money.

MR. RADOM: It's a tremendous sum of money.

THE REFEREE: What happened? Why? Where did you come up with Neisco? Why are they so attractive? You could have loaned it to me. I might even be more attractive. Why Neisco?

MR. RADOM: As of November 24th Neisco and its affiliated companies were indebted to the Teamster Fund for sums in excess of five or six million dollars.

THE REFEREE: They are already in for \$6 million.

MR. RADOM: That is correct.

The decision had to be made at that time whether to permit the collapse of Neisco or try to save it. After analyzing all factors it was decided that the interests of the Fund and the beneficiaries of the Fund were best served by advancing more money and permitting the operation to continue.

THE REFEREE: And throwing \$1.5 million in to save \$5 million or \$6 million.

MR. MILLER: Was the collateral adequate in November, '69 to cover the outstanding loan?

MR. RADOM: At that time as a going concern, yes.

THE REFEREE: This company had sufficient assets?

MR. RADOM: As a going concern.

THE REFEREE: To make you whole?

MR. RADOM: As a going concern. But because the talent

February 24, 1970

(Continued)

which we had -- one of the great assets they had was the pool of talent in Carolina. Once they began to disperse, the operations ceased to function and we were faced with having these assets put under the hammer. Then the answer is no.

MR. MILLER: Did you have appraisals made at that time?

MR. RADOM: Not at that particular time. But we did have surveys made by people who were retained by the fund and they reported back to us that under the hammer the fund was exposed to substantial losses and contrasted that with a rehabilitation under Chapter XI the trustees --

MR. HENDLER: One point I do want to discuss, your Honor. Mr. Itzler knows the position taken by the committee. I have been advised that part of counsel's reasons or presence in court today is towards the formulation of a plan which will be, I presume, acceptable to the creditors, at least the majority in number and amount, and towards this gain I feel progress is made.

Mr. Itzler tells me probably within the next two weeks he will be in a position to convene the creditors' committee and offer a plan which will be the plan. It won't be subject to negotiation because the funds will come from outside sources, to wit the Teamsters union pension plan, for whatever purpose they see fit, plus whatever funds are required from other directions.

MR. ITZLER: It's our problem too and the problem of the creditors.

February 24, 1970
(Continued)

THE REFEREE: Why?

MR. ITZLER: Because we must turn to the pension fund for the funds necessary to make a plan.

MR. RADOM: Yes, sir.

Mr. Itzler has asked that I present to the trustees a program, and I am perfectly delighted to do that because I believe that this company should survive for a number of reasons, primarily because through the operation, rehabilitation of the company we are going to be able to realize a great deal more that way. It isn't going to be done in two weeks because it's going to take somewhat longer to get an answer.

April 16, 1970

THE REFEREE: How much money are they prepared to give you?

MR. BALLON: That would provide for about \$65,000 or so or \$70,00 to general creditors. It would probably require a down payment in an equal amount to Internal Revenue Service, and it would require the payment of administration expenses. In round figures they have been advised that they would be required to put up immediately about \$200,000.

* * * * *

May 12, 1970

MR. HENDLER: We can assist in that concept.

The Teamsters has an administration claim in the approximate sum of \$1.6 million pursuant to your order. They have and are agreeable to put up the funds from third-party sources necessary to effectuate the cash settlement with creditors as well as the payment of administration expenses, and they have further assured the committee that they will make available to the committee for the benefit of all creditors in the event of a default a release of \$50,000 of their administration claim for the creditors' benefit.

So notwithstanding the loss, the one who would suffer most severely would be the Teamsters, and they are, in turn, going to have a fund of \$50,000 available if there is an adjudication.

May 12, 1970
(Continued)

So we are reasonably optimistic, in spite of the losses, in spite of the problems and the peculiar nature of these proceedings, that the debtor now will go forward with its plan and based upon these representations, we have, of course, sent a letter to the general creditor body requesting acceptances.

If your Honor does recall, all members of the committee except one did approve this plan and I am reasonably certain that the general creditor body will go along.

September 17, 1970

MR VOGEL: We have from the outset placed on the record many, many times that we are hopeful of reaching some sort of plan, so that everyone will benefit thereby.

At the same time, we have asked the Court to limit the adjournments to a week-by-week basis, in order to keep the pulse of the negotiations well in hand.

There have always been two major items; one the Court has oftentimes point out, that must be resolved before there can be any plan of confirmation here.

One of them is the Internal Revenue Service, which to date has been gathering information and has not yet --because it has not yet had that information in hand long enough -- been able to reach a conclusion.

September 17, 1970
(Continued)

Secondly, the Masmo trustee must be able to deliver right, title and interest in the plan of confirmation. The Masmo trustee has this under advisement today and has been gathering information with the cooperation of the Pension Fund.

We've made available, pursuant to the Court's suggestion, all of the papers that we have in our possession in order to bring this possible plan of confirmation forward.

* * * * *

MR. LEINWAND: The union has led us to believe that there is \$50,000 being put up and they are going along in financing this settlement, and we have been going along on that assumption. *9/17/70 B. W. Lee*

* * * * *

THE REFEREE: The Government asks that I discharge the Horvaths. That's the first prong of its motion, in essence terminate all salaries and close the New York office, and this means the salaries that they or I might be able to break down and determine what of it is attributable to the New York office.

I mean, I don't see how it could be done, but let's assume this is so.

That will cut down losses, certain expenses, and if we have less expenses, we should theoretically have less losses or, if you will, more profits.

Then you are telling me that without the specter of continued losses, we will, at our leisure, or reasonably so, allow

September 17, 1970
(Continued)

the Government to do what it has to do, so that the Internal Revenue can make known what it requires, and at the same time it will give Mr. Young and his counsel an opportunity of studying the extent, if any, to which Masmo is interested in the arrangement of this company; is that right?

MR. VOGEL: That's precisely right. We have made inordinate progress in other directions. The only two remaining items are the items your Honor just stated.

October 20, 1970

MR. SCHAEFFER: May I place upon the record the fact that the Fund, in my characterization, as a quasi-public institution' feels very strongly, primarily about upwards of two to 300 people being unemployed if this plan is not confirmed, very strongly about it, in a community that could ill afford it and also fees very strongly about the United States Government not being paid this very substantial sum of money that is owing to it.

There is no doubt, in the opinion of everybody representing the Fund, that failure of confirmation will bring a zero payment to the United States Government. I did want the record to show that.

THE REFEREE: I frankly am also sympathetic to the employees and also know the natural desire of the Fund to do what is right for the government. Frankly I think that if -- well, it's in the realm of speculation, but if the government and debtor

October 20, 1970
(Continued)

come to an accord on a stipulation, I see no reason why we should not confirm this arrangement, do you, Mr. Itzler?

MR. ITZLER: Well, the only thing standing between us and confirmation would be the deposit, and the deposit must come from the Pension Fund, and unless the Pension Fund, which we do not control, gives us that money, we cannot confirm.

THE REFEREE: Miss Freiman, I would ask the assistance of the United States Attorney to set up an appointment as rapidly as possible so that at least we can sketch out the provisions of a stipulation to the embodied on confirmation.

MISS FREIMAN: Yes.

THE REFEREE: And I know that Mr. Schaeffer or Mr. Vogel and Mr. Itzler will make themselves available to do that. I would like it done quickly. I agree with you I would not want to carry this case for another six months and discover that we are nowhere and then the only casualty of the whole war will have been George Horvath. The price that's being paid is a viable company later and I want it as soon as possible.

Then I take it the application, in any event, is that I defer requiring the posting of indemnity?

MR. SCHAEFFER: For a period of three weeks.

November 4, 1970

MR. VOGEL: From the beginning we have told your Honor that we think it will take two to three months to have this deal wrapped up, which is why we originally said that we would like the expenses of Neisco reduced a near break-even point. We are working toward that right now, your Honor. Mr. Horvath has gotten off the payroll. I am told they are daily reducing the expenses.

THE REFEREE: Like how?

MR. VOGEL: Mr. Horvath can best tell you how they are doing that right now. But there has been a good-faith effort to reduce the expenses. They are curtailing the operations of the New York office to try and bring that loss down. At that point we would have the ability, without that pressure and the loss, to work out a plan, two to three months to work out a plan.

* * * * *

THE REFEREE: It's a matter of appraising this as a going business quite apart from anything else.

Why doesn't the Pension Fund give up? Why don't you give up?

MR. VOGEL: Because counsel for the Fund are fighters, your Honor.

THE REFEREE: Now, I am going to need an appraisal.

MR. VOGEL: For the Fund to give up nothing is gained all around. I think to the extent that we can work out an arrangement here, your Honor, it should be done. If it cannot be done, it just cannot be done. But I don't think that at this point when everyone truly is working toward one end --

THE REFEREE: Miss Freiman, have you heard from Mr. Franklin?

MISS FREIMAN: He will be over very shortly.

MR. VOGEL: Please don't discount the fact that everyone in good faith is working toward a solution here. They really are. I think I represent that on my own knowledge.

*Completed (Faint)
with the...*

November 19, 1970

MR. VOGEL: Your Honor, subject to the statement from the Government, we on our end can report substantial progress. We are drafting papers today. I have an idea of how long it will take us to draft them and complete those papers and have them signed so the plan can be confirmed. It all really depends on the Government, your Honor.

* * * * *

THE REFEREE: So if I understand everybody this afternoon, there seems to be a spirit of optimism over this which I had never expected to see. Hopefully then by the end of the year, or the beginning of the year, the light at the end of the tunnel will be a lot closer, won't it? Is that the way it looks?

MR. VOGEL: It looks like that way.

THE REFEREE: Does this mean then that the creditors the moment we have got things finalized will give us the consents to the arrangement, I can look to confirm?

November 19, 1970

(Continued)

MR. ITZLER: I am still short a few consents, but we are working on getting them. We will work the rest of the month toward that.

THE REFEREE: So the Government, Miss Freiman, has done everything that could be done at that end. You are working on the terms of the stipulation, if I understood you.

MISS FREIMAN: Yes.

THE REFEREE: Your recommendation will be favorable.

MISS FREIMAN: It has been. Mine has gone down.

THE REFEREE: Fine

The Pension Fund is agreed. The matter of working out whatever you have to do, these loose ends there, the Pension Fund is agreed?

MR. VOGEL: Yes.

December 22, 1970

MR. ITZLER: We were most grateful to the Court for giving us the last 30 days within which we could work with the Pension Fund and with the Government. I am also pleased to say that we have all but completed our negotiations and agreements with the Pension Fund.

There is still a slight problem with the United States. Although the payout agreed upon before this Court is now a firm one, the other proposals in the stipulation prepared by the Government are not altogether acceptable to the debtor, its

December 22, 1970
(Continued)

officers and the Pension Fund. Consequently, I am told that Mr. Vogel is going to prepare a stipulation which he deems acceptable to him and submit the same to the representative of the Government and the Government and Mr. Vogel will work from there with an idea toward achieving a stipulation that is acceptable to all parties. Is that correct, Mr. Vogel?

MR. VOGEL: That's precise, your Honor.

THE REFEREE: How long will that be?

MR. VOGEL: Miss Freiman and I have met on three occasions, your Honor, over the last few weeks, as late as Friday afternoon, and I will prepare this week an alternative stipulation.

THE REFEREE: You mean tomorrow or Thursday.

MR. VOGEL: That's correct, your Honor, and it will be transmitted simultaneously to Miss Freiman and, with her permission, which she has already given me, I will simultaneously transmit it to Washington to the appropriate person there.

THE REFEREE: In other words, the papers you are about to draw, you have agreed on all the provisions?

MR. VOGEL: No, your Honor. There are a number of provisions in the stipulation that Miss Freiman forwarded to me which are unacceptable to the debtor and to the Pension Fund and I have communicated that fact to Miss Freiman and she has

December 22, 1970
(Continued)

asked me to prepare a stipulation that we would be willing to sign and that is what we are doing and that will bring to the attention of all Government parties interested precisely the areas of disagreement.

MISS FREIMAN: Your Honor, I am only puzzled by one thing. I have advised Mr. Itzler on several occasions that I was meeting with Mr. Vogel and I got no response from him that he was at all interested in participating.

THE REFEREE: I don't think he is, judging off what I heard this morning. He's perfectly contented to have Mr. Vogel draw and you agree on a stipulation.

MISS FREIMAN: Fine, if that's true, because Mr. Vogel is representing not the debtor.

THE REFEREE: Neisco doesn't count in this phase of it, as I really read what's happening here. Mr. Itzler is happy the Fund is in it and he's perfectly contented to let you and the Fund work out the debtor's salvation without him.

Did I understand that from your tone?

MR. ITZLER: In all respects but one, your Honor.

THE REFEREE: And?

MR. ITZLER: The stipulation that was prepared necessarily involved the derivative liability of the individual Horvaths by virtue of certain provisions in the agreement perpetuating certain liabilities, the personal liabilities of the individual Horvaths are involved.

April 13, 1971

THE REFEREE: Neisco, Inc.

MR. STRUMPF: In the Neisco matter, I understand there was a meeting with the Internal Revenue Service and Regional Counsel in relation to a stipulation for payment of taxes and that an agreement has been reached with Regional Counsel and it's been sent to Washington for approval. I also understand there has been an agreement among all of the concerned parties to adjourn all matters until May 3rd subject to the court's approval.

THE REFEREE: What is the situation with the stipulation gentlemen? Does anyone have any ideas?

MR. STRUMPF: I understand it's awaiting approval from Washington?

MR. VOGEL: Mr. Radom and I met two weeks ago in Washington at a time when the Department of Justice met in conjunction with the Internal Revenue Service to review the offer and the stipulation, and Mr. Radom and I offered to be in Washington in case any questions were asked, and we went and waited and were called and answered a number of questions, and I understand from Mr. Honecker that the Internal Revenue Service has approved the offer and the stipulation of settlement; that it is now in the hands of the Department of Justice, Tax Division; that at the moment they are acting favorably on it, although that is not a definitive statement of where it might be.

May 25, 1971

MR. STRUMPF: Your Honor, we are still awaiting approval from Washington of the stipulation with the government.

Subject to your Honor's approval, I think we have the agreement of all or most of the parties here today to adjourn until June 15th. There is not much we can do except wait.

THE REFEREE: Mr. Vogel?

MR. VOGEL: That is perfectly all right, your Honor.

If Miss Freiman can give us any current status, we would appreciate it.

July 8, 1971

MR. VOGEL: We have been there. Mr. Radom and I personally went to Washington on March 30th. It is now more than three months later, and Mr. Radom, my client, would like to make a statement, your Honor.

THE REFEREE: Yes, Mr. Radom.

MR. RADOM: To use the observation of your Honor,
to adopt it, this case has tarried far too long and I think that it's time for the Government to say yes or no and if not, if they don't give us a satisfactory answer, we should have the company adjudicated bankrupt.

* * * * *

MR. RADOM: On behalf of the pension fund, we, therefore,
ask the Court to fix a date for consideration of adjudication
unless in the interim period Miss Freiman reappears and says the

July 8, 1971
(Continued)

Government has accepted the offer.

September 2, 1971

THE REFEREE: Neisco, Inc.

I suppose the first order of business is to find out whether the government has approved.

MISS FREIMAN; Yes, your Honor, I have been authorized by the Department of Justice to advise the court that the Attorney General has approved the stipulation which was proposed, as modified by subsequent commitments from Mr. Vogel.

Those subsequent modifications were pertaining to restrictions on the applications of the loss carry-forward and the continued participation, or the anticipated participation of Mr. Eisenrod.

THE REFEREE: That means you can solicit your acceptances or file them now, Mr. Itzler.

MR. ITZLER: I can do better than that. I have all the acceptances; I am away over the number and amount.

THE REFEREE: File them.

MR. ITZLER: I cannot, your Honor. We have agreed with the creditors committee that we shall not file the acceptances until the deposit of approximately \$10,000.00.

THE REFEREE: Is made to whom?

MR. ITZLER: Is made with the court.

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(Continued)

THE REFEREE: The court is not a depository of funds, Mr. Itzler.

MR. ITZLER: Then we would make it with the trustee or a representative of the creditors committee, a good-faith deposit.

However, your Honor, I was notified this morning for the first time that the deposit will not be made available by the Pension Fund.

THE REFEREE: Why?

MR. ITZLER: Or the Pension Fund does not intend to make the deposit available. I am not sure of their reasons.

THE REFEREE: Supposing we find out.

Mr. Vogel?

MR. VOGEL: Yes, your Honor. You may recall at the last hearing we told the court that it was possible at that time, in light of certain events that had occurred, that the Fund, through its trustees, might be unwilling to participate in a plan of arrangement.

THE REFEREE: Now?

MR. VOGEL: Yes, your Honor, now.

THE REFEREE: And after 18 months of carrying you?

MR. VOGEL: At that time, your Honor, I notified the Department of Justice of that fact also. I told them when they asked me whether or not we would make certain modifications at that time that I thought they ought to know that in light of certain events that occurred at that time.

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(Continued)

THE REFEREE: Why?

MR. VOGEL: There was an indictment of a man who was accused of taking a bribe from Mr. Horvath. At that time, as I have said, I notified the Department of Justice so that they would not be under any misapprehension in case the trustees decided that they did not want to go forward. I was notified on Monday that the trustees had voted at their last meeting not to go forward.

THE REFEREE: Why?

MR. VOGEL: Your Honor, I was just told that they did not want to go forward with the plan.

I am now communicating that to the court.

I immediately, upon learning that, communicated that to the Department of Justice and I was told it was on the Attorney General's desk and had not yet been accepted, and he appreciated my telling him that fact so that there would be no embarrassment to the Attorney General.

I told him at that time--this was Monday--that on Thursday we would have a definitive statement on the record but I wanted them to know before that time so that no embarrassment would be caused; and I also notified the office of Mr. Honnecker, and he also was advised.

I also spoke to Miss Freiman at that time.

I now have stated everything I know, your Honor.

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(Continued)

MISS FREIMAN: Your Honor, there may be some misunderstanding here.

I was advised by the Department of Justice that Mr. Vogel had promised that he would keep this open until a week, which was today.

THE REFEREE: I assumed all along--

Mr. Radom, I don't mind telling you that I am not here to insist that companies come to the aid of business, but I have been carrying this for 18 months. I think it comes with exceedingly poor grace at this stage that the trustees have suddenly decided they should not become involved after being in so long.

MR. VOGEL: Your Honor, may I answer that, please?

THE REFEREE: What does the indictment have to do with it?

MR. VOGEL: I was told by a high official of the Department of Justice a month ago that he was exceedingly embarrassed and understood quite completely our position in this case--that it had dragged so long at their insistence, not ours.

THE REFEREE: You gave me until today--that is why I addressed my remarks to Miss Freiman as an opener because I was well aware of the fact that if the Department had not approved, you people were giving up. But not give me that reason you gave me that some fellow was indicted for something he should not have done.

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(Continued)

MR. VOGEL: Your Honor, it came to our attention and it was on the record--

THE REFEREE: Why didn't you tell me then?

MR. VOGEL: Your Honor, we did on the record, and if you will check the record you will see that we, as attorneys, stated that we did not know what the trustees would do at their next meeting, but that it would be brought to their attention, and in light of the indictment we did not know what the trustees would do; but we put the court on notice that it might walk away, and has in fact done so.

MR. RADOM: ⁵ [I think the record is clear--I made it abundantly clear on the record and to others involved in these proceedings that by reason of the indictment the Trustees were going to re-evaluate their position, and they have done so.

The plan envisioned the continued collaboration of the Fund with members of the Horvath family. By reason of the serious charges brought against a member by a consultant of the Pension Fund, it was decided this was not a course of action they decided to pursue.] ⁶

THE REFEREE: They are going to try to clean the skirts that they did not clean all this time.

I raised the question of the Fund's involvement two years ago, wondering how it is that Pension Funds and Welfare Funds get involved in dying companies. I even had suggested that the Bureau become involved by looking into it, and was sure that this

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(Continued)

was a legitimate act of the Fund known to its trustees, and that a calculated--that ultimately it would be to the betterment of the Fund.

Now you tell me that because one fellow has been indicted, all of this is out the window--is that what you are saying?

MR. RADOM: No, sir, I am not saying that at all. I am saying this, first, anybody, whether he be part of the Fund at this time or a member of the Pension Fund group, if he did wrong, he should be punished. We have no brief for anybody.

On the other hand, if a member of the debtor group, Mr. Horvath, was engaged as an accomplice in perpetrating this fraud on the Pension Fund and attempted to lie just briefly on the record just six weeks ago, under those circumstances we have a right to reassess our position, and we have done so, your Honor.

THE REFEREE: You know that Horvath is not involved in this case; I am dealing with a corporate debtor. Horvath has been out of the picture. I am dealing with a company with countless employees.

MR. RADOM: We want those employees kept on the payroll. We hope that this matter can be continued.

THE REFEREE: How? Either it is you or nobody.

MR. RADOM: I think that is probably correct.

THE REFEREE: Then it cannot be continued.

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(Continued)

MR. RADOM: It can be continued without Horvath, in my judgment.

THE REFEREE: What does that mean?

Is the Pension Fund prepared to go forward if we excise the remaining Horvath in this company?

Is that what you are telling me?

MR. RADOM: The fund is not an operator. I am suggesting this, however, that given time and because our collateral is substantially less than our secured debt, perhaps over a period of time a buyer can be found who can operate this company and keep those employees employed--that is all I can tell you, your Honor.

THE REFEREE: The Fund is out, completely out.

If I adjudicate the company, the judgment has to be my own whether a trustee in bankruptcy will operate it for a reasonable period.

MR. RADOM: We understand the risks involved.

THE REFEREE: But I am most exceedingly distressed. I do not think the Pension Fund has dealt with the court in good faith.

I know you have money, I know you have sustained losses but I would assume you people knew what you were doing when you started. The mere fact that George Horvath is no good or this fellow who has been indicted is no good has nothing to do with the original decision to get involved with a company in financial ways.

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(Continued)

MR. RADOM: I think I rather object to the court's characterization, your Honor, of our lack of good faith here, because we have acted in good faith. We have demonstrated our good faith by providing the funds.

THE REFEREE: Well, why don't you continue? The fact that one bad apple is in the box doesn't mean that the venture was ill-conceived to start with--unless you are telling me that maybe you should never have gotten involved in this.

Is that what you are telling me, Mr. Radom?

MR. RADOM: I am not suggesting that at all, because I find it a little difficult--

THE REFEREE: I will withdraw it. I really should not put on on the spot to evaluate what the trustees might have done in their judgment.

MR. RADOM: Years ago.

THE REFEREE: This is a most distressing kind of event, Mr. Radom.

MR. RADOM: This is not a very happy situation for any of us, but I do want to assure the court that there are over 300 employees involved here--

THE REFEREE: How many?

MR. RADOM: Over 300. We have no desire to see them on the streets or on welfare.

We would be prepared to provide the funds required and to keep them going--

September 22, 1971
(Continued)

THE REFEREE: You mean if this case goes--no, there will be a trustee who will come to the court for the exercise of judgment.

MR. RADOM: We are prepared to rely on his good faith.

MR. ITZLER: Your Honor, may I be heard?

THE REFEREE: What else is there to say? You have to be in the wings; you are dead!

MR. ITZLER: Your Honor, I have a suggestion to make to you, and perhaps the court can see fit to act on it.

Firstly, we agree that the creditors and the court have been put on by the Pension Fund. In fact as late as approximately a week ago, the Pension Fund evinced their intention to go forward by subordinating their position to a new loan.

I think we have relied unduly--

THE REFEREE: How have you been hurt by an extra week?

MR. ITZLER: I will tell you who has been hurt--the creditors have been hurt here, if you Honor please.

THE REFEREE: Mr. Itzler, if you were so concerned with the creditors you would have consented to adjudication a year ago at least.

MR. ITZLER: May I make a suggestion to the court, and I believe it is in good faith; it would serve every one's purposes except perhaps the Pension Fund--Your Honor, I suggest that we be continued as a debtor in possession.

I suggest that we be permitted to bring a lawsuit against the Pension Fund.

September 22, 1971
(Continued)

THE REFEREE: Let the Trustee do it.

MR. ITZLER: No, because this way the creditors can get something and the business can continue, your Honor.

The only losses that will be sustained, your Honor, if there are losses sustained, will be sustained by the Pension Fund; and we believe the Pension Fund has put itself in this position, and that if losses must be sustained, then it is too bad.

We believe we should go forward and bring this action. We have a legal right, a legal remedy, and we want the right to pursue it.

The debtor should be continued in possession, and if losses are sustained they should accrue to the Pension Fund and not to the creditors.

THE REFEREE: I am not going to carry you in possession. I am not going to continue with a company that hasn't shown anything--the first month, a loss of \$31,000.00; the next month 50-odd; the next two months, 30-odd; April--for some reason I have obliterated my own notes--May of 1970, \$75,000.00.

MR. ITZLER: If your Honor please--

THE REFEREE: You don't stand a chance for someone to pick them up.

MR. ITZLER: The losses that have been sustained in the past 4 or 5 months have been minimal. As a matter of fact, most of it has been in the depreciation figure on the balance sheet, and all of those losses inured directly to the detriment of the Pension Fund--not to the creditors.

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(Continued)

THE REFEREE: Let the trustee in bankruptcy sue them.

MR. ITZLER: Your Honor, we should keep this company alive if there is a possibility.

THE REFEREE: Do you think I am going to carry a Chapter XI, a debtor operating a company dependent on a lawsuit, the validity of which I am not sure about?

MR. ITZLER: Then in the alternative I make this suggestion, your Honor: I believe that way everyone could get what they are looking for; the court should dismiss this matter. If creditors wish to go forward, then they say "I believe creditors will cooperate with the debtor, and I believe that the debtor should bring this lawsuit immediately against the Pension Fund, and if they are successful, all creditors will be paid."

THE REFEREE: I do not like to dismiss proceedings; I prefer to keep my hand on the rudder instead of letting the scavengers fly in.

MR. ITZLER, I believe the creditors, your Honor--

THE REFEREE: You have told me repeatedly during these proceedings, Mr. Itzler, that if the Fund was out you had no other outlook.

Now you are asking me to keep a company in an arrangement proceeding without a chance to rehabilitate. You have nobody who can rehabilitate you, Mr. Itzler.

MR. ITZLER: No, we still have the Pension Fund and we believe a court of competent jurisdiction will compel them to put the money up, your Honor.

September 22, 1971
(Continued)

THE REFEREE: Do I have the power to compel them?
If I do not have the power to compel them on specific performance,
I do not know a court that has.

MR. ITZLER: I do not believe they have any standing
in this proceeding at this time, but they do have a standing
in a court of competent jurisdiction. A court of competent
jurisdiction can direct them to do what they promised to do.

THE REFEREE: Mr. Radom?

MR. RADOM: I merely want to make one more statement--

THE REFEREE: I want to know whether there is any
possibility that the trustees will reconsider their decision
in light of the fact, apart from the employees, and so on, that
this court has carried this case at the insistence of the Fund--
and I am frankly not impressed by the fact that somebody has
been indicted.

If you people are in and have gone in, thinking that you
are in an ill-conceived venture, what is the point of getting
out now--if you feel you should never have been here in the
first place?

MR. RADOM: I daresay the imposition on the court has
been carried to a great extent by the government through its
lack of attention, reasonable attention.

THE REFEREE: Mr. Radom, if Miss Freiman had told us
three months ago that everything was all right and we had come to
this point, as these cases are wont to do because things can't
be wrapped up in three months, you could have backed out today,
having been assured by the Attorney General. You know why

September 22, 1971
(Continued)

you are getting out. I think you are getting out because the Pension Fund is getting scared.

MR. RADOM: No, your Honor, we are not running frightened. This is a prudent decision by men.

THE REFEREE: It certainly wasn't prudent when you started.

MR. RADOM: We are not going to argue that.

THE REFEREE: Well, I have no alternative. There is no way--

MR. RADOM: I want to make one statement. I do not fault Miss Freiman--

THE REFEREE: I do not fault any body.

Quite frankly I am distressed by the whole situation.

If the Fund's motivation to get out now is based on the fact that it wants to make a better record for itself, I do not see that that is going to achieve it.

You have been in this case for a year and a half; you have invested large sums of money, and if there was something wrong when you got in, Mr. Radom, as I observed two years ago, I do not see that getting out now could cure it. It may lessen the pain but it will not cure the disease.

I have no alternative.

Is there any reasonable chance, Mr. Radom, that the trustees might reconsider, or is it your feeling that they will not reconsider?

MR. RADOM: They will not reconsider, your Honor.

October 5, 1971

MR. VOGEL: Your Honor, good morning.

Pursuant to the Court's suggestion, Mr. Radom went to the trustees of the Fund and presented the entire picture once again and I can report to the Court that we are pointing in the direction of attempting to work out the arrangement and that we are using our best efforts at this very moment to work that out and we will now re-contact the government and the other parties to the arrangement as soon as possible to bring this to a successful conclusion.

I can't at this point guarantee that it will be a successful conclusion but we are certainly pointed in that direction and our efforts will be directed toward the end.

January 19, 1972

MR. ITZLER: We are moving forward as if the Government had consented.

THE REFEREE: Then please do. At least let's get the loose end out of the way and hopefully the Government. If IRS should agree, Miss Freiman with you, that puts the matter in the hands of the Attorney General?

MISS FREIMAN: Yes, your Honor.

THE REFEREE: Is that because of the size of this or other consideration?

MISS FREIMAN: No; it is because of the size.

THE REFEREE: What is the usual position of the Justice Department when it receives a favorable recommendation from IRS?

MISS FREIMAN: I don't understand, your Honor.

THE REFEREE: What does Justice do, investigate separately on its own or does it more or less accept the views of the Internal Revenue people?

MISS FREIMAN: I would say it depends on the case.

THE REFEREE: Well frankly, Mr. Radom, and just having some small familiarity with Government, I am going to put this to you straightly; even if we get the most favorable reception next week from Miss Freiman's letter and the appraisal and even if IRS moves itself diligently and we get the most favorable reception and it gets down to Justice, then in the fullness of time they move with reasonable dispatch, I can't see us being out of here before March or February, at best late February. I don't know what Justice will do.

January 19, 1972

(Continued)

We will have to I think start hammering Justice. You know, this is not the only case that Mr. Mitchell has to handle and it is probably far from his most important and I think we are probably going to have to start, once we are over IRS, pushing the Attorney General the same way we have been doing IRS.

So I want to put it to you straightly and being as most optimistic as I can, and I can't see you out of here for 60 days, frankly -- 45 probably.

MR. ITZLER: I don't think an order of confirmation is really what Mr. Radom is seeking. Eventually, yes, but I think that once we get the stipulation from the Government--

THE REFEREE: I am telling you that by the time Justice finishes it, after IRS finishes it, after she sends it down, it maybe a month, a month and a half.

Are you prepared? I can't push them.

MR. RADOM: I know but in the same degree of candor as you have expressed, I also indicate to you that I don't think we are going to underwrite that period of time.

MR. ITZLER: I don't think there is any underwriting any more, Joe.

THE REFEREE: I am sure there are losses but I will leave that to you. I think at the point, Mr. Radom, where you feel enough is enough, you better let us all know. There is no point in Justice spinning its wheels and me and Miss Freiman and Mr. Itzler and Mr. Vogel and the rest of us if you are out of the picture, no matter what they do for you.

MR. RADOM: My present impulse is to advise the Court and everybody present that a week from today or a week from tomorrow is it.

January 19, 1972✓
(Continued)

THE REFEREE: I think frankly --

MR. RADOM: And I think the next time I will come in
and urge Mr. Vogel to express our desire to have an adjudication
if the Government does not acquiesce to the proposal.

THE REFEREE: I doubt that they are going to get it
within a week.

Also recd. Feb. 1, 1972

Start Pg. 51

Especially Pg. 54

E-128

PLAINTIFF'S EXHIBIT 18 (IN EVIDENCE)-- LETTER FROM RADOM TO
ITZLER AND CERTIFICATE OF INDEBTEDNESS, RE: NEISCO, INC.
DATED NOVEMBER 28, 1969.

LAW OFFICES OF
JOSEPH S. RADOM
1643 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

313 963-7187

November 28, 1969

Ronald S. Itzler, Attorney
Ballon, Stoll & Shyman
1450 Broadway
New York, New York 10018

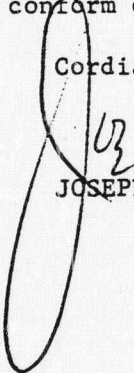
Re: Neisco, Inc.

Dear Mr. Itzler:

Enclosed herewith is a photo copy of Certificate of Indebtedness which was signed by George Horvath at his offices on November 25th in the amount of \$313,950.00.

You will note that I omitted the last paragraph of your original draft of the Certificate and also inserted an interest rate of 9%. As and when the Court enters an Order amending the November 24th Order permitting the increased rate of interest, please advise so that we can conform our copies.

Cordially,


JOSEPH S. RADOM

jsr/wbs
Encl.
cc: Mr. Jack Polish

Dep't. of I-10 FOR D.C.S. May 6, 1976

New York, New York
November 25, 1969

No. 1
\$313,950.00

CERTIFICATE OF INDEBTEDNESS

FOR VALUE RECEIVED, the undersigned, NEISCO, INC., debtor-in-possession, promises to pay to Central States Southeast and Southwest Areas Pension Fund, at its offices located at 29 East Madison Street, Chicago, Illinois, in lawful money of the United States of America, the sum of \$313,950.00 with interest from the date hereof, at the rate of Nine (9%) percent per annum, until paid, payable Thirty (30) days after demand.

This Certificate of Indebtedness is issued pursuant to authority vested in NEISCO, INC. by order of the United States District Court for the Southern District of New York made and entered on November 24, 1969 and amended by order of said Court dated , 1969.

The undersigned hereby gives to the Central States Southeast and Southwest Areas Pension Fund a first lien upon all of its property of whatsoever kind or nature, and the payment of this Certificate shall have priority in payment over all existing obligations of NEISCO, INC., debtor and NEISCO, INC., debtor-in-possession, and over all costs and expenses of administration, except charges for the Referee's Salary and Expense Fund, as provided in Section 40 of the Bankruptcy Act and taxes incurred during the pendency of the proceedings for an arrangement filed by NEISCO, INC. in the United States District Court for the Southern District of New York (69-B-769).

NEISCO, INC. hereby waives presentment for payment, demand, notice of non-payment, notice of protest, and protest of this Certificate of Indebtedness.

The Central States Southeast and Southwest Areas Pension Fund shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver be in writing and signed by the Central States Southeast and Southwest Areas Pension Fund, and then only to the extent specifically set forth herein; a waiver on one such event shall not be construed as continuing or as a bar to or waiver of such right or remedy on a subsequent event.

NEISCO, INC.
Debtor-in-Possession

By: _____
Its Treasurer

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PLAINTIFF'S EXHIBIT 19 (IN EVIDENCE)-- LETTER FROM LLOYD S.
KUPFERBERG TO ITZLER, RE: NEISCO, INC., DATED AUGUST 18, 1971.

LAW OFFICES
SCHWARTZ, COOPER & KOLB
CHARTERED
33 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602

TELEPHONE
AREA CODE 312
RANDOLPH 6-0845

August 18, 1971

Balon, Stoll & Itzler
1450 Broadway
New York, New York

Attn: Ronald Itzler Re: American National Bank and Trust Company
of Chicago - Loan to Neisco, Inc.

Dear Mr. Itzler:

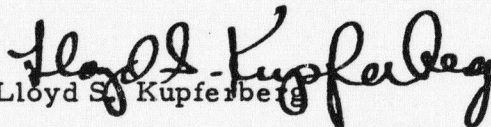
We are attorneys for the American National Bank and Trust Company of Chicago who are loaning funds to Neisco, Inc., debtor in possession. I am sure you are familiar with the transaction.

In order to consummate the loan, the Bank will require your opinion as counsel for debtor in possession that the security interest of the American National Bank and Trust Company of Chicago, granted pursuant to the loan transaction referred to, will be a first valid, binding security interest upon the assets of the debtor and debtor in possession, subject only to the priority of the Referee's salary and expense fund and accruing taxes.

The Bank will also require corporate resolutions of Neisco, Inc. authorizing the transaction.

Your sending to us, as soon as possible, the aforementioned opinion of counsel together with certified copies of resolutions will be greatly appreciated.

Very truly yours,


Lloyd S. Kupferberg

LSK/djp
cc: Mr. George Jacobsmeyer
Lawrence Vogel, Esq.

PLAINTIFF'S EXHIBIT 20 (IN EVIDENCE)-- LETTER FROM ITZLER TO
KUPFERBERG, RE: LOAN TO NEISCO, INC., DATED AUGUST 25, 1971.

August 25, 1971

Schwartz, Cooper & Kolb, Esqs.
33 North La Salle Street
Chicago, Illinois 60602

Att: Lloyd S. Kupferberg, Esq.

Re: American National Bank & Trust Com-
pany of Chicago
Loan to Neisco, Inc.

Gentlemen:

We are in receipt of your letter of August 18, 1971. It is our opinion that the certificate of indebtedness issued by Neisco, Inc. to the American National Bank & Trust Company of Chicago, pursuant to the order of the Honorable Edward J. Ryan, Referee in Bankruptcy, made and entered on August 13, 1971, shall be a first security interest on all of the property of the debtor-in-possession and debtor, Neisco, Inc., and shall have priority in payment over all existing obligations of the debtor and debtor-in-possession and over all costs and expenses of administration in the Chapter XI proceeding of Neisco, Inc. and any superseding bankruptcy proceedings, except charges for the Referee's salary and expense fund, as provided in Section 40 of the United States Bankruptcy Act and taxes incurred after the date of the said borrowing during the pendency of the said Chapter XI proceeding.

Very truly yours,

RSI/s

Ronald S. Itzler

PLAINTIFF'S EXHIBIT 21 (IN EVIDENCE)-- LETTER FROM DANIEL
COHEN TO LAURENCE VOGEL, ESQ., RE: BALLON V. DUFFEY ET AL
DATED NOVEMBER 19, 1973.

November 19, 1973

Schaeffer, Dale, Vogel & Tavrow, Esqs.
1501 Broadway
New York, New York 10036

Attention: Laurence Vogel, Esq.

Re: Ballon, Stoll & Itzler
v. Thomas J. Duffey, et al

Dear Mr. Vogel:

In order that all issues may be properly presented before the court, we would like to serve an amended complaint to include a third cause of action similiarly based on a contract as the first cause of action, but the agreement involved affects defendant's promise to pay all costs, expenses and funds necessary to confirm any plan of arrangement directly to Neisco, Inc.-- rather than to plaintiff. Apparently this was part of the parties' understanding and the original complaint is not clear in this respect. A copy of the amended answer is enclosed.

Naturally, your answer will be similarly amended to include the appropriate denials of all of these additional allegations, if you so desire. I would appreciate hearing from you soon concerning this matter.

I suggest that our trip to Chicago to examine and inspect the minutes of the defendant Trust be adjourned until after you have served your response to plaintiff's interrogatories.

Very truly yours,

Daniel Cohen
For the Firm

DC:AS

PLAINTIFF'S EXHIBIT 22 (IN EVIDENCE) -- LETTER FROM ITZLER
TO NEISCO, INC., DATED APRIL 1, 1970.

April 1, 1970

Neisco, Inc.
545 Madison Avenue
New York, New York

Re: Neisco, Inc.

Gentlemen:

At the request of your accountants, Wasserman and Taten, we hereby inform you that as at the date of the filing of the original petition under Chapter XI of the Bankruptcy Act, Neisco, Inc. was not indebted to the undersigned.

Very truly yours,

RSI/s

Ronald S. Itzler

PLAINTIFF'S EXHIBIT 23 --TRANSCRIPT OF DEPOSITION OF DEFENDANT
THOMAS J. DUFFEY, TAKEN JANUARY 16, 1973.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FALLON, STOLL & ITZLER,

Plaintiffs,

-against-

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR.,
ALBERT D. MATHESON, WILLIAM J. KENNEDY,
JOHN A. MURPHY, JACK A. SHEETZ, JOHN
SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT
HOLMES, DONALD PETERS, WILLIAM PRESSER,
ODELL SMITH, ROY L. WILLIAMS, FRANK
H. RANNEY and JOSEPH MORGAN, not individu-
ally, but as Trustee under a Common Law
Trust of the Central States, Southeast
and Southwest Areas Pension Fund,

Defendants.
-----X

1450 Broadway, New York, New York
January 16, 1973 - 10:00 A.M.

EXAMINATION BEFORE TRIAL of THOMAS J. DUFFEY,
a Defendant herein, taken pursuant to notice dated
December 5, 1972, and held at the offices of Fallon,
Stoll & Itzler, Esqs., at the above place and time,
before Marian J. DuVal, a Notary Public of the State
of New York.

ACME REPORTING SERVICE
SHORTHAND AND STENOGRAPHIC REPORTERS
NOTARIES PUBLIC
140 NASSAU STREET
NEW YORK CITY
TELEPHONES: BEEKMAN 3-0664-0665-0666

A p p e a r a n c e s :

BALLON, STOLL & ITZLER, ESQS., per Se,
Attorneys for Plaintiff,
1450 Broadway,
New York, New York.

BY: BURTON D. STRUMPF, ESQ.,
of Counsel.

JOSEPH RADOM, ESQ.,
Attorney of Record,
1800 National Bank Building,
Detroit, Mich. 48226,

and

SCHAFER, DALE, VOGEL & TAVROW, ESQS., OF COUNSEL,
Attorneys for Defendants,
410 Park Avenue,
New York, New York.

BY: LAURENCE VOGEL, ESQ.

- - -

IT IS HEREBY STIPULATED AND AGREED by
and between counsel for the respective parties
hereto that the sealing, certification and fil-
ing of the within examination be, and the
same hereby are waived;

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed and
sworn to before any notary public or an officer
authorized to administer oaths with the same
force and effect as if signed and sworn to
before a Clerk of this Court;

IT IS FURTHER STIPULATED AND AGREED that

all objections except as to the form of the question be, and the same hereby are, reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that a copy of this deposition shall be furnished to the attorneys for the defendants by the attorneys for the plaintiffs, without charge.

THOMAS J. DUFFEY, one of the defendants herein, having been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. STRUMPF:

Q Mr. Duffey, what is your full name and address?

A Thomas J. Duffey, 6300 West Bluemound Road, Milwaukee, Wisconsin 53213.

Q What is your profession, business or vocation?

A I am an attorney.

Q Do you practice law?

A Yes.

Duffey

4

1
2 Q Where do you practice?

3 A In Wisconsin.

4 Q Are you also one of the trustees of the
5 Central States Southeast and Southwest Areas Pension
6 Fund, which we will call "The Fund" from hereon?

7 A Yes.

8 Q How long have you been a trustee?

9 A Approximately twelve years.

10 Q What are your functions as a trustee of
11 The Fund?

12 A As a trustee, I am one of the people who makes
13 the policy decisions for the trust fund.

14 Q What exactly does the trust fund do?

15 A The trust fund -- first of all, it is a common
16 law trust, established, I believe, under the laws
17 of the State of Illinois and pursuant to labor agree-
18 ments between employers and various Teamster Unions,
19 funds flow into the pension fund and the trustees
20 of the pension fund administer those funds, invest
21 those funds, establish the schedule of benefits
22 for the beneficiaries of the trust and see to it
23 that the beneficiaries are paid the pensions that
24 they are entitled to.
25

Duffey

5

1
2 Q As a trustee, do you consider and make
3 decisions relating to all of those various matters
4 that the fund participates in?

5 Are you generally involved in all of the
6 decision making processes of the fund?

7 A I would say in the policy decision making pro-
8 cess, yes.

9 Q How many trustees are there?

10 A Sixteen.

11 Q Is there a chain of command among the
12 trustees?

13 A I don't understand your question.

14 Q If you were a corporation, as an example,
15 there would be a Chairman of the Board, perhaps, and
16 a president and a vice president.

17 Is there any chain of command such as
18 that, where one trustee is superior or higher in
19 authority to another trustee?

20 A Yes.

21 Q In other words, all sixteen trustees are
22 equal in weight, would you say, in voting and parti-
23 cipating in decision making?

24 A Yes.
25

Duffey

6

1
2 Q Do trustees meet regularly?

3 A Yes.

4 Q Can you tell me when they meet regularly,
5 or how?
6

7 A They meet quarterly and infrequently between
8 quarterly meetings.

9 Q In other words, do I understand that they
10 have regular quarterly meetings and additional meet-
11 ings where necessary?

12 A Yes.

13 Q Where do those meetings take place?

14 A Usually at the office of the pension fund in
15 Chicago, Illinois.

16 Q What is that address?

17 A 8550 West Bryn Mawr Avenue, Chicago.

18 Q Is that an office building?

19 A Yes.

20 Q Is that office managed or run by any
21 particular individual?

22 MR. VOGEL: What is the relevancy of
23 that question to the lawsuit?

24 MR. STRUMPF: Off the record for a minute.

25 (Discussion off the record.)

Duffey

7

1
2 A Presently, no one particular person.

3 Q Can you tell me who managed or ran that
4 office during the year 1969?

5 A Yes.

6 Q Who was that?

7 A Mr. Francis J. Murtha.

8 Q Was he a trustee of the Fund at that time?

9 A No.

10 Q Was he a paid employee of the Fund?

11 A Not of the -- well, it is a legal question, as
12 to what his status was. He was paid a form of com-
13 pensation by the pension fund.

14 Q Was he paid for the purpose of running
15 that office?

16 A Yes.

17 Q Let me understand. Is this the business
18 office of the Fund?

19 A Yes.

20 Q Do you know Mr. Alan, A-l-a-n, Dorfman?

21 A I know an Allen Dorfman, A-l-l-e-n, yes.

22 Q Was he connected with the Fund in any
23 way in 1969?

24 A Yes.
25

Duffey

8

1
2 Q What was his function?

3 A He was a special consultant to the Fund.
4

5 Q What was his function as special con-
6 sultant?

7 A He was akin to the -- what you might term the
8 chief executive officer of a large financial in-
9 stitution.

10 Q Was he paid a salary?

11 A Yes, he was.

12 Q How long did he maintain this position;
13 or when did he start and when did he finish?

14 A I believe he started sometime in 1967, and he
15 resigned as special consultant in 1972.

16 Q Did he perform services for the Fund in
17 this office in Chicago that you mentioned?

18 A Yes.

19 Q Do you know whether Mr. Dorfman main-
20 tained any other office in Chicago, other than the
21 one you mentioned?

22 A He maintained an office in his own private
23 business in Chicago.

24 Q Do you know what his business was?

25 A He was in the insurance business.

Duffey

9

1
2 Q And that was in another office, other
3 than the office of the Fund?

4 A Yes.

5 Q Getting back to the meetings conducted
6 or held by the Fund, the quarterly meetings and what-
7 ever other meetings took place, are minutes kept?

8 A Yes.

9 Q Who takes those minutes?

10 A Presently?

11 Q Well, who took the minutes in 1969, if
12 you know?

13 A A court reporting firm.

14 Q Who took them in 1970?

15 A A court reporting firm.

16 Q And in 1971?

17 A A court reporting firm.

18 Q And are copies of the minutes furnished
19 to the Fund?

20 A Yes.

21 Q Does every trustee receive a copy of
22 those minutes?

23 A Not to my knowledge. They are available for
24 the trustees to read, but they are not furnished.
25

Duffey

10

1
2 Q Where are they made available?

3 A At the pension fund office.

4 Q To your knowledge, are minutes taken by
5 a court reporting firm of each and every meeting of
6 the Fund, including those irregular meetings between
7 quarterly meetings?

8 A Well, I can't testify to a certainty that each
9 and every meeting was attended by a court reporter.
10 There may have been special meetings where a court
11 reporter was not present, but that would be the ex-
12 ception to the rule.

13 Q What is the usual procedure for calling
14 a special meeting of the trustees?

15 A How does it come about?

16 Q Yes.

17 A A notice is sent to the trustees for the calling
18 of a special meeting.

19 Q Written notice?

20 A Yes.

21 Q Do you keep a file of the notices which
22 you receive on special meetings?

23 A No.

24 Q Do you know Joseph Teitelbaum?
25

1
2 A I did.

3 Q You did know him?

4 A Yes.

5 Q You no longer know him?

6 A He is dead.

7 Q When did he die?

8 A About two weeks ago.

9 Q What was his profession, if you know?

10 A He was an attorney.

11 Q Did he represent the Fund in any way?

12 A Yes, he did.

13 Q In what manner? Was he on the staff
14 of the Fund?

15 A No. He was an independent attorney who we
16 retained for various matters.

17 Q Specific types of matters?

18 A Specifically on loan matters.

19 Q Would you say that he was retained at
20 the inception of a loan matter, or at some other point?

21 A It could be at the inception, or it could be at
22 some other point.

23 Q Do you know Al Baron?

24 A Yes.
25

Duffey

12

1
2 Q Can you tell me who he is?

3 A He is an attorney.

4 Q Was he employed in 1969 by the Fund?

5 A Again you are asking for a legal status or
6 conclusion. He is retained by the pension fund. He
7 is not an employee, to the best of my knowledge.

8 Q When you say retained, is he retained under
9 a general retainer?

10 A Again, you are asking me for -- you are asking
11 a question I am not able to answer. He is retained
12 by the pension fund and devotes, I believe, one hundred
13 percent of his time to the pension fund.

14 Q Then would you say he received a regular
15 retainer?

16 A Yes.

17 Q Rather than being paid specifically matter
18 by matter?

19 A Correct. He receives a regular retainer rather
20 than a per case or per diem on a per diem or per hour
21 basis.

22 Q And to your knowledge, you say he devotes
23 full time to the matters of the Fund?

24 A To my knowledge, he does.
25

Duffey

13

1
2
3 Q Is his office in the Fund office?

4 A Yes, it is.

5 Q Do you know a Murray Weisser, W-e-i-s-s-e-r?

6 A Yes.

7 Q Can you tell me who he is, please?

8 A He is a certified public accountant with offices
9 in Chicago, Illinois.

10 Q Does he practice accounting alone or with
11 a firm?

12 A He is with a firm.

13 Q Do you know the name of the firm?

14 A I don't.

15 Q Is it Bloominfeld, Weisser, Friedman & Co.?

16 A I think so.

17 Q Are they employed as regular accountants
18 for the Fund at this time?

19 A No. Not as the regular accountants for the Fund.

20 Q Were they in 1969?

21 A They did work for the Fund, but they did not --
22 were not the regular accountants.

23 Q Does the Fund have regular accountants?

24 A Yes.

25 Q Can you tell me who they were in 1969?

Duffey

14

1
2 A Harold Silverberg.

3 Q Is that the name of the firm?

4 A I believe so.

5 Q Do you know his address?

6 A New York City.

7 Q Do you know for what purposes Mr. Weissner's
8 firm was used by the Fund during 1969?

9 MR. VOGEL: I object.

10 MR. STRUMPF: On what grounds?

11 MR. VOGEL: Relevancy. I don't see the
12 relevance. What has that got to do with the
13 lawsuit?

14 MR. STRUMPF: Mr. Weissner was among the
15 cast of characters that met, relating to Neisco,
16 and he met as a representative of the Fund and
17 was held out to be an accountant for the Fund.

18 THE WITNESS: Mr. Weissner's firm was given
19 specific assignments by the trustees, concerning
20 certain loans, and I would be guessing now,
21 but I believe --

22 MR. VOGEL: Don't guess, then.

23 Q He was given certain specific assignments
24 relating to loans?
25

Duffey

15

1
2 A Yes.

3 Q Is that your answer?

4 A Yes.

5 Q Are you familiar with the company known
6 as Neisco, Inc.?

7 A Yes.

8 Q When did you first come into contact with
9 that company as a trustee of the Fund?

10 A I believe in 1967.

11 Q What happened at that time?

12 A Neisco borrowed money from the pension fund, made
13 a loan from the pension fund.

14 Q You were a trustee at that time?

15 A Yes.

16 Q And as a trustee, you were involved in the
17 decision making process as to whether or not to grant
18 that loan?

19 A Yes.

20 Q Does the Fund and the trustees have a
21 regular practice of reviewing its loans at specific
22 times?

23 A I don't understand the question.

24 MR. VOGEL: What is the relevancy?

Duffey

16

MR. STRUMPF: All right. I will withdraw that question.

Q Did there come a time that you became aware as a trustee that the Neisco Company was in financial difficulty?

A Yes.

Q When was that?

A My best recollection was in -- well, almost from the inception.

Q Would that be 1967?

A Yes.

It is difficult to answer the question. They had difficulties almost from the inception in handling the debt service of the loan that we made with them.

In 1969, it was brought to our attention by our attorneys that they were in very difficult straits financially.

Q Was the Neisco account regularly reviewed by the trustees from its inception until 1969?

MR. VOGEL: What do you mean by regularly?

A Let me say this: It came up on a number of occasions.

Duffey

17

1
2
3 Q You say in 1969, your attorneys advised
4 you that Neisco was in financial difficulty.

5 Can you tell me who exactly that attorney
6 or attorneys was or were by name?

7 A Messrs. Radom and Teitlebaum.

8 Q Do you recall the manner in which you
9 obtained this information?

10 In other words, was there a regular meeting
11 of the trustees?

12 A I don't recall specifically when or what the
13 setting was when it first came to our attention.

14 Q You know it was in 1969?

15 A Yes, it was in 1969.

16 Q Can you pinpoint the general time a little
17 better than that?

18 Was it the beginning of 1969 or the
19 middle?

20 A Late summer, early part of 1969.

21 Q Would you think in August or September
22 or around that time?

23 A Around that time.

24 Q Would you say that that information was
25 acquired as a result of many conversations, or was

Duffey

18

1
2 there a specific meeting at which the trustees re-
3 ceived the report from Messrs. Radom and Teitlebaum
4 concerning the financial condition of Neisco?

5 A I don't recall whether it was at a specific
6 meeting or if it was the culmination of a series of
7 meetings. Neisco was the subject of almost con-
8 tinuous discussion through 1969.

9 Q Did there come a time that the trustees
10 of the Fund made a definite decision as to any
11 course of action to take regarding the Neisco loan?

12 A Yes.

13 Q When was that?

14 A In the fall of 1969.

15 Q Can you give me a little bit better date,
16 if possible? Was it August?

17 A I can't give you any more definitive date than --

18 Q Other than the fall of 1969?

19 A Yes.

20 Q What is the course of action that the
21 trustees decided to take?

22 A Well, our attorneys indicated that Neisco was
23 in very difficult shape financially; that we had
24 really two alternatives. We could proceed to foreclose
25

Duffey

19

1
2 on our stock privilege, in which event the business
3 operation of Neisco would probably cease, and the
4 result would be that we would be foreclosing on a
5 dead plant with the equipment no more than salvage
6 value -- and, as it were -- or we could infuse dollars
7 into this operation with the hope of salvaging it as
8 a going concern.
9

10 Our attorneys advised us that if we took
11 the second alternative that it could be done only
12 under the auspices of a Court, and that we should not
13 consider granting any additional funds to the Neisco
14 Corporation as such.

15 Q Are you now giving me a description of
16 a course of many conversations, or was there a par-
17 ticular meeting at which this was said by your
18 attorney?

19 A This was at a particular meeting sometime in
20 the fall of 1969.

21 Q Was it at a regular quarterly meeting
22 or a meeting called specifically for that purpose?

23 A It could have been -- you are asking me to
24 guess, and I'm sorry. I just can't guess.

25 Q Do you recall whether minutes were taken

1
2 of that meeting?

3 A I would have to check our records. If it was
4 at a regular trustees' meeting that this report was
5 made, we should have minutes of that report.

6 Q And those minutes would be at the regular
7 Fund office?

8 A Yes.

9 Q You have not brought copies with you today,
10 have you?

11 A No.

12 Q Do you recall who was present at that
13 meeting?

14 A No, because I don't recall whether it was at
15 a full board of trustees meeting or not.

16 Q You say that your attorney advised you
17 that if the procedure to be followed was to infuse
18 capital or money, it should be done under the auspices
19 of a Court?

20 A That is correct.

21 Q Did they describe exactly what they meant
22 by that?

23 A Yes, they did.

24 Q What kind of a proceeding did they discuss?
25

Duffey

21

1
2 A They discussed the Chapter XI bankruptcy pro-
3 ceeding.

4 Q Did the attorneys describe what that en-
5 tailed?
6

7 A I don't believe so.

8 Q In other words, they did not tell you the
9 ramifications or the effects or the procedures to be
10 followed in a Chapter XI proceeding?

11 A In a general fashion, they did, yes.

12 Q They didn't describe it in detail?

13 A No.

14 Q Do you recall whether anybody was pre-
15 sent at that meeting, representing Neisco?

16 A I do not.

17 Q You do not recall, or --

18 A I do not recall.

19 Q Do you recall any meetings during the
20 fall of 1969, at which anyone was present on be-
21 half of or representing Neisco?

22 A No.

23 Q Do you recall a meeting in September of
24 1969 at the Fund office, or at Mr. Dorfman's other
25 office, at which Mr. George Horvath was present?

Duffey

22

1
2 A I don't recall it, but I wouldn't deny that
3 such a meeting took place.

4 Q Have you ever met George Horvath?

5 A Yes.

6 Q Do you recall discussing the financial
7 difficulties of Neisco during the fall of 1969 with
8 Mr. Horvath?

9 A I believe I discussed the problems -- the
10 financial problems of Neisco with Mr. Horvath sometime
11 during the summer of 1969. Yes.

12 Q Were those discussions in person?

13 A Yes.

14 Q Where did they take place?

15 A In Milwaukee. He came to Milwaukee.

16 Q When?

17 A July, in there.

18 Q Who else was present at this meeting?

19 A Just Mr. Horvath and myself.

20 Q Can you tell me what he said to you and
21 what you said to him?

22 A It was a very short meeting. It was shortly
23 after a meeting that we had had in Chicago, where
24 Mr. Horvath had made some statements concerning his
25

Duffey

23

1 history with the pension fund, and I had indicated
2 to him that he was attempting to give us years of
3 history in just a brief, short, few moments.
4

5 Shortly thereafter, he came to my office
6 in Milwaukee and indicated to me that he wanted to
7 detail this history to me, and I informed him that
8 if he had anything to say that he should appear be-
9 fore the trustees and tell it to all the trustees,
10 not just to me.

11 Q Was he complaining about the Fund?

12 A Yes.

13 Q Did he complain specifically to you about
14 certain actions of the Fund?

15 MR. VOGEL: I object on the grounds of
16 relevancy. What has this got to do with the
17 lawsuit?

18 MR. STRUMPF: I think that will also be
19 established, Mr. Vogel, because there was a
20 meeting, I believe, of the trustees and several
21 other people at a later time at which Mr. Horvath
22 complained, so to speak.

23 MR. VOGEL: What has that got to do with
24 the lawsuit?
25

Duffey

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3 MR. STRUMPF: That meeting or those meet-
4 ings resulted in the Chapter XI being filed
5 by the office of Ballon, Stoll & Itzler, a re-
6 presentative of Ballon, Stoll & Itzler, and
7 what went on at all those meetings is relevant
8 to this lawsuit.

9 MR. VOGEL: I don't see how it could be
10 relevant. I don't see what went on at those
11 meetings has to do with the retention of your
12 firm.

13 MR. STRUMPF: Off the record.

14 (Discussion off the record.)

15 MR. VOGEL: I direct the witness not to
16 answer the question, as not a relevant question
17 to the cause of action that is outlined in the
18 complaint.

19 Q You indicated before that when Mr. Horvath
20 came to your office and had a discussion with you,
21 you advised him that a proper forum to discuss
22 whatever he had to discuss was with the whole board
23 of trustees. Is that correct?

24 MR. VOGEL: The record speaks for itself.

25 Yes, he did say that.

Duffey

25

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2
3 Q Was a meeting of the trustees called
4 for that purpose?

5 MR. VOGEL: Objection.

6 MR. STRUMPF: On what grounds?

7 MR. VOGEL: Relevancy. You are asking the
8 same questions. The complaint asks for relief.
9 That is concerned with the retention of your
10 law firm by the Fund, and if you want to ask
11 Mr. Duffey any questions with regard to the
12 facts of that meeting, he is here to answer them,
13 and if you are testing his knowledge in order
14 to refresh his recollection, you have not found
15 that his recollection is inadequate with regard
16 to any specific meetings in which the retention
17 of your firm was mentioned, and I would like to,
18 in the interest of saving time, direct your
19 attention, Mr. Strumpf, to those allegations
20 that are made in the complaint.

21 Q Have you ever met Frederick Ballon, a
22 member of the firm of Ballon, Stoll & Itzler?

23 A Not that I recall.

24 I might say I met some men here this
25 morning. Their names I don't recall, but Mr. Ballon

Duffey

26

1
2 was not one of them.

3 Q Do you recall ever meeting any attorney
4 from the firm of Ballon, Stoll & Itzler prior to this
5 morning?

6 A Not that I recall, but you must remember I meet
7 thousands of people in the course of a year. But I
8 have no independent recollection of meeting anyone
9 from this law firm prior to today.

10 Q Do you remember whether or not, during
11 the fall of 1969, a meeting took place in Chicago
12 among some or all of the trustees and some of the
13 attorneys or representatives of the Fund, and Mr.
14 Horvath, regarding the Neisco loan?

15 A I have no independent recollection of it.

16 Q You do not recall such a meeting taking
17 place?

18 A I have no independent recollection of it.

19 I might say that we had many meetings
20 with Mr. Horvath regarding his various loans, but
21 absent being given a date and being allowed to check
22 our minutes, I have no independent recollection.

23 Q You did not bring those minutes with you
24 today, did you?
25

Duffey

27

1
2 A No.

3 Q Are you aware that the notice to take
4 your deposition requested that you bring with you all
5 books, records, correspondence, memoranda and all
6 other documents relating to the transactions between
7 the defendants and the plaintiff and Neisco, Inc.?

8 MR. VOGEL: Let me answer for the wit-
9 ness that we searched the records of the Fund
10 with regard to transactions between Ballon,
11 Stoll & Itzler and the Fund and found none.

12 With regard to the Fund and Neisco, they
13 are just not relevant to the action that you
14 had commenced against the Fund, and therefore
15 I directed them not to bring any of those materials.

16 MR. STRUMPF: It seems to me that if there
17 are any other minutes or documents relating to
18 the decision to file a Chapter XI, they would
19 be relevant to this action.

20 MR. VOGEL: Why?

21 MR. STRUMPF: Because, obviously, if a
22 Chapter XI was filed and a law firm was retained,
23 for that purpose, that is the subject of this
24 action.
25

Duffey

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2
3 MR. VOGEL: What has that got to do with
4 the retention of the law firm by the Fund? In
5 your own affidavit, you maintain that you were
6 retained by Neisco. They were your client.

7
8 MR. STRUMPF: Mr. Vogel, we are not trying
9 the case here today. Right?

10
11 MR. VOGEL: I am just trying to tell you
12 why we did not bring materials that you asked
13 for.

14
15 MR. STRUMPF: I will have to subpoena the
16 minutes of the Fund's, if that is the position
17 you are taking.

18 MR. VOGEL: That is the position.

19
20 MR. RADOM: You must, however, establish
21 its relevancy.

22 BY MR. STRUMPF:

23 Q Did the trustees of the Fund make a de-
24 cision from the two alternatives that the attorneys
25 gave you regarding the Neisco situation?

A Later we did, yes.

Q When was that?

A I believe it was in early 1970.

Q What was that decision?

Duffey

29

1
2 A That we agreed to furnish money. I believe the
3 term is for a certificate of indebtedness from the
4 Bankruptcy Court for the operation of the business
5 of the debtor in possession in the Chapter XI proceeding.
6

7 Q Let us backtrack a minute.

8 You indicated before that your attorneys
9 had advised the trustees that there were two alter-
10 natives: one, to foreclose on the loans.

11 Secondly, to go through a Chapter XI pro-
12 ceeding. My question was was a decision made between
13 those two alternatives?

14 A We did not make a decision that the debtor should
15 file a Chapter XI. Possibly the debtor made that
16 decision.

17 Q I'm sorry. I don't understand. You told
18 me that your attorneys -- the Fund's attorneys -- ad-
19 vised the trustees that they had those two alter-
20 natives. Isn't that so?

21 A I may have misinformed you.

22 MR. VOGEL: I don't think that is what you
23 said, Mr. Duffey, but why don't you explain what
24 you said?

25 THE WITNESS: Neisco had requested additional

Duffey

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2 moneys to operate its business for various reasons
3 they had.

4 Q When did they request additional moneys?

5 A In late '69. They could not service the exist-
6 ing debt, and indicated that they needed additional
7 dollars.

8 Our attorneys cautioned us that if the
9 trustees were of a mind to infuse the needed moneys
10 into the Neisco operation, that it should do so under
11 the auspices only of a Court, and that they recommended
12 against our giving Neisco an additional loan, so to
13 speak, absent those safeguards.
x

14 Q Do you know whether this was conveyed to
15 Neisco?

16 A I do not know whether it was conveyed to Neisco.

17 Q You yourself did not discuss this with
18 Neisco or its representatives?

19 A Not to my recollection.

20 Q Do you know whether or not the trustees
21 came to a formal conclusion as to what the course of
22 action should be, and whether or not to discuss this
23 course of action with Neisco?

24 THE WITNESS: Would you repeat the question?
25

Duffey

31

(The pending question was read back by the reporter, as recorded.)

MR. VOGEL: Do you understand the question?

THE WITNESS: I really don't understand the question. It seems to be a double question.

MR. STRUMPF: I will withdraw the question.

Q Did you ever come to New York in connection with the Neisco situation during the year 1969?

A Not that I recall.

Q What was the position of Joseph Radom with the Fund in 1969?

A He acted as one of the attorneys for the pension fund.

Q Did he devote all of his time to the Fund, do you know?

A I don't know.

Q Do you know how he was paid?

A I know how he is being paid today.

Q Do you know how he was paid in 1969?

A On a per diem basis, per hour basis.

Q So that as far as you know, he was not on a general retainer?

A Not to my knowledge.

Duffey

32

1
2 Q Is Leonard Melman also an attorney for
3 the Fund?

4 A Yes.

5 Q Is he on a general retainer with the Fund?

6 A Not to my knowledge.

7 Q Was he in 1969?

8 A Not to my knowledge.

9 Q Was he also paid on a per matter or a
10 per diem basis?

11 A Yes, I believe he was.

12 Q When did you find out that Neisco was
13 going to file a Chapter XI proceeding?

14 A When did I personally find out?

15 Q Yes.

16 A It was in the fall of 1969.

17 Q Do you remember when?

18 A I believe it was in October.

19 Q For your information, I will tell you
20 that the petition in Chapter XI was actually filed
21 on November 24, 1969. Does that help you in pin-
22 pointing it? Do you think it was October?

23 A It was October or November. That is two and
24 a half years ago. I can't give you a date.
25

Duffey

33

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2
3 Q How did you find out that Neisco was
4 going to file a Chapter XI?

5 A My best recollection is that our attorneys in-
6 formed us.

7 Q Can you tell me which of your attorneys
8 so informed you?

9 A It was either Radom or Teitlebaum, or both.

10 Q Did he or they inform you in a telephone
11 conversation or in person?

12 A I don't recall.

13 Q Do you recall whether the trustees met
14 at or about the time that you found that Neisco was
15 going to file a Chapter XI?

16 A I don't recall.

17 Q Do you maintain a diary?

18 A Yes.

19 Q Do you have your diary for 1969?

20 A I do at my office, yes.

21 Q Would it show the dates, places and times
22 that you met as a trustee of the Fund?

23 A Yes. The best record would not be my diary.
24 It would be my expense statement that I submit to
25 the pension fund.

1
2 Q Do you have copies of that information
3 at your office?

4 A Yes.

5 Q Will you furnish those to me, please?

6 A For what period, September, October?

7 Q Last half of 1969: July 1st to the end.
8 Mr. Vogel?

9 MR. VOGEL: Yes.

10 THE WITNESS: Do you want me to extract
11 anything having to do with Masmo or Montmarte?

12 Q I am not interested in your other pro-
13 fessional assets. If you can extract it, fine.

14 A All right.

15 Q Were the trustees requested by anyone to
16 furnish any funds relating to the Neisco Chapter XI
17 proceeding?

18 A Relating to it?

19 Q Yes.

20 A Yes.

21 Q What was requested of the Fund?

22 A My best recollection is that a request was made
23 for some million six hundred or million and six hundred
24 and fifty thousand dollars.
25

Duffey

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Q When was that request made?

A Early in 1970 is my best recollection.

Q This then was after the Chapter XI proceeding was filed?

A That is correct.

Q Was any request made prior to the filing of the Chapter XI?

A Not to my knowledge.

Q Did you discuss with any of the Fund's representatives or with the other trustees what funds would be required by Neisco, if it went into a Chapter XI?

A Prior to it going into a Chapter XI?

Q Yes.

A Not to my recollection.

Q Are you familiar with Chapter XI proceedings, as an attorney?

A Not really. I have a vague idea of what it is. I don't practice in the Bankruptcy Courts.

Q Do you know what the courses of a Chapter XI proceeding entail?

A No.

Q Who is Sol Eisenrod?

Duffey

36

1
2 A He is an attorney.

3 Q Where does he practice law?

4 A I don't know that he practices law, but I be-
5 lieve he resides in New York City.

6 Q Does he have an office in New York City,
7 to your knowledge?

8 A To my knowledge, he does.

9 Q In Manhattan?

10 A I don't know where. Somewhere close to here.

11 Q You think he does not practice law?

12 A I don't know whether he does or not. I know
13 he is an attorney, but if he is a businessman or
14 he practices law or not, I can't tell you.

15 Q Do you know what his business is?

16 A Well, yes. I know a couple of businesses that
17 he is in.

18 Q What are they?

19 A He has a industrial development in Orlando,
20 Florida. I believe it is called Regency Industrial
21 Park. Now, what part of it, I don't know, is his. I
22 don't know. But I know that he operates that business.
23 He is part of a development in Boca Raton,
24 Florida, an apartment condominium development.
25

Duffey

37

1
2 Q Would you say, generally, he is in the
3 real estate business?

4 A I know of two ventures he is in. What else he
5 is in I don't know.

6 Q What is his relationship with the Fund?

7 A Those two entities I just described are borrowers
8 of the pension fund.

9 He has also been called upon as sort of
10 a consultant in this Neisco matter. He was called
11 upon to supervise the trustees.

12 Q When did the trustees call upon him?

13 A I can't give you an exact date.

14 Q Was it before the ChapterXI or after the
15 Chapter XI was filed?

16 A I can't tell you.

17 E Q For what purpose did the trustees call him?

18 A I believe he had some experience in the textile
19 industry also. In other words, besides being a
20 general businessman with good business judgment, in
21 our opinion, I believe he or someone in his organiza-
22 tion had some knowledge of the textile industry.

23 Q But what purpose was he to serve for the
24 Fund?
25

Duffey

38

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2 A His representative, or the man from his own
3 organization — I believe his name was Rugendorf.

4 Q Ervin or Irwin?

5 A I don't know.

6 Q Is that R-u-g-e-n-d-o-r-f?

7 A I don't know.

8 Mr. Rugendorf, as I recall, was physically
9 put in attendance at the site of the plants, at least
10 on a part-time basis, to oversee as our representa-
11 tive, the operation of the plant and to, I believe,
12 co-sign checks that were drawn on the account.

13 Q At the plants, which were where?

14 A In North Carolina.

15 Q And is Mr. Rugendorf in Mr. Eisenrod's
16 office?

17 A He is associated with Mr. Eisenrod. How I
18 don't know, but we always considered him as being
19 with Mr. Eisenrod.] E

20 Q And Mr. Eisenrod, you say, was to counter-
21 sign checks of Neisco?

22 A Yes. In the Chapter XI proceeding.

23 Q Where was Neisco's main office during
24 the Chapter XI proceeding, if you know?

25

Duffey

39

1
2 A At one time they maintained an office in New
3 York City here, but when that was terminated I can't
4 tell you. Then I believe they operated out of North
5 Carolina.

6 Q How much was Mr. Rugendorf paid for these
7 services?

8 A I don't recall.

9 Q Was he paid?

10 A I don't recall.

11 Q Was Mr. Eisenrod paid?

12 A I don't recall.

13 Q Did you ever meet Mr. Eisenrod or Mr.
14 Rugendorf personally?

15 A I have met Mr. Eisenrod. I don't recall ever
16 meeting Mr. Rugendorf.

17 Q Did you meet with Mr. Eisenrod specifically
18 in connection with this Neisco matter that we are dis-
19 cussing?

20 A Mr. Eisenrod was part of the -- of making pre-
21 sentations to the trustees concerning Neisco. I
22 recall that.

23 Q Where would that have been?

24 A At our office in Chicago.

25

1
2 Q Prior to the Chapter XI?

3 A I believe it was after the Chapter XI -- during
4 the Chapter XI.

5 Q This meeting or the meetings, did the
6 trustees ask Mr. Eisenrod to perform the function
7 which you discussed before by himself and with Mr.
8 Rugendorf?

9 A If the trustees did -- whether our attorneys
10 did -- what the mechanics were, I don't recall, but
11 it was with the consent, certainly, of the trustees.

12 Q Did the trustees discuss whether or not Mr.
13 Eisenrod and/or Mr. Rugendorf would be paid for
14 their services?

15 A I don't recall it being discussed.

16 Q And you don't know whether or not, in
17 fact, they were?

18 A No.

19 Q Let me understand.

20 Did the trustees authorize your attorneys
21 to make these arrangements with Mr. Eisenrod and
22 Mr. Rugendorf to perform these services?

23 A Our attorneys were authorized to do anything
24 that was necessary to protect our interests in
25

Duffey

41

1
2 Neisco and the Chapter XI proceeding.

3 Q Did you know of the firm of Ballon,
4 Stoll & Itzler prior to the institution of this
5 lawsuit?

6 A Not that I recall.

7 Q You do not recall the name, Ballon, Stoll
8 & Itzler?

9 A No.

10 Q Do you know where the Neisco Chapter XI
11 proceeding took place?

12 A I believe it was in New York City.

13 Q And do you know by whom the Fund was
14 represented in this proceeding?

15 A I believe by Mr. Radom and Mr. Vogel's firm.

16 Q Did the trustees, during the Chapter XI
17 proceeding, receive reports as to what took place and
18 was taking place in the Chapter XI proceeding?

19 A We received some reports on a proposed plan
20 or arrangement. We received some reports on the
21 operation of the mill.

22 Q Do you know whether they received a report
23 of every hearing that took place in New York?

24 A No.
25

Duffey

42

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2 Q Did you or the other trustees request
3 such a report from Mr. Radom?

4 A I didn't, but what the other trustees did I am
5 not aware of.

6 Q Did you say that you were advised that
7 a plan of arrangement was going to be proposed by
8 Neisco?

9 A No, I don't think I said that.

10 There was reported to us suggested plans
11 of arrangement, but to my knowledge, no plan of
12 arrangement was ever agreed upon.

13 Our attorneys made certain reports to us,
14 and then reported back that the other side was still
15 where they left them, the last time back.

16 Q Who was the other side?

17 A The debtor in possession. In other words, they
18 could not finalize an agreement or a plan.

19 Q To your knowledge, no plan of arrangement
20 was filed in the Chapter XI proceeding?

21 A That is what I was led to understand.

22 Q Did the trustees discuss, during the
23 Chapter XI proceeding, how a plan of arrangement,
24 if proposed, would be financed?
25

Duffey

1
2 A Yes.

3 Q Was there any specific meeting, w
4 you can recall, at which that was discussed?

5 A Yes, but I can't give you a date. I ca
6 some of the features of the plan that were sugge
7 if it could be finalized.

8 Q Are you telling me about a series of meet-
9 ings, or general conversations, or one specific
10 meeting?

11 A At one specific meeting, Mr. Radom, in detail,
12 indicated to the trustees what had been suggested and
13 what he could recommend to the trustees.

14 Q What did he recommend to the trustees?

15 A I don't know that I can give it to you in a
16 total form.

17 Q To the best of your knowledge?

18 A Well, that the general creditors were to be
19 paid, I believe, twelve and a half percent of their
20 claims; that the United States Government Internal
21 Revenue Service had a claim of some \$455,000 that was
22 to be paid in an installment fashion -- I can't give
23 you the terms -- and that the IRS was requesting
24 that the pension fund guarantee a certain portion of
25

Duffey

44

1
2 that over the period.

3 That Ernest Horvath was to have an em-
4 ployment contract, I believe, for \$36,000 a year, with
5 a certain guaranteed number of years, and if he died,
6 his widow was to, I believe, get half that figure.

7 For a six-year term, in other words, our
8 liability was somewhere in the neighborhood of
9 \$200,000 or \$100,000, depending on whether he lived
10 or died. I believe he was requesting, at the time,
11 some life insurance policies that we had, because he
12 was up in years, and rather than give him his life
13 insurance policies back, it was suggested that we
14 enter into some sort of an employment contract. There
15 were some other terms, the features of which I don't
16 recall.

17 Q Do you recall approximately how much was
18 required to put through the Chapter XI proceeding?

19 You indicated the creditors would get twelve
20 and a half percent. Do you recall how much that in-
21 volved in dollars and cents?

22 A I am searching now, but my recollection is
23 somewhere between five hundred and seven hundred
24 thousand.
25

Duffey

45

1
2 Q Was there a discussion as to where that
3 money would come from?

4 A Yes.

5 Q What was that discussion?

6 A That the pension fund was to guarantee the cost
7 of the administration of the plan.

8 Q When you say guarantee, do you mean
9 guarantee or do you mean pay?

10 A Pay.

11 Q In other words, am I correct that the
12 trustees, if this plan was to be put through, would
13 be financing the plan?

14 A That was my understanding.

15 Q Were there any other costs discussed, in
16 addition to the twelve and a half percent to general
17 creditors and the payments that might be in the In-
18 ternal Revenue service?

19 A Horvath's contract.

20 Q Was there any discussion about admini-
21 stration expenses?

22 A Yes. The administration expenses allowed by
23 the Court.

24 Q What is your understanding about what
25

1 administration expenses includes?

2
3 A My understanding, for what it is worth, is the
4 trustees' fees, the attorneys' fees, whatever the
5 Court fees are; and that is it.

6 Q Was that ever discussed by the trustees
7 at a meeting?

8 A Yes.

9 Q Were you advised by anyone of your attorneys
10 as to what the administration expenses included?

11 A No.

12 Q Do you recall how much they would have
13 amounted to if the Chapter XI proceeding was con-
14 cluded?

15 A No.

16 Q To your recollection, did Neisco have any
17 funds during the Chapter XI proceeding with which it
18 could have financed this plan?

19 A I don't know.

20 Q Did you believe, as a trustee, that if
21 this plan was to be consummated, that the Fund would
22 have to finance all of the costs?

23 A That was my belief, and we were so advised by
24 our attorneys, that this was what we could -- this
25

Duffey

47

1
2 is what we had to look toward if the plan of arrange-
3 ment were approved.

4 Q Did there come a time when the Fund made
5 a decision that it was not going to finance Neisco's
6 arrangement?

7 A Yes.

8 Q When was that?

9 A I can't give you a date.

10 Q I would like you to try, if you can, to
11 be as close as you can.

12 For your information, if it helps, Neisco
13 was adjudicated on March 22, 1972.

14 A That really doesn't help me.

15 It was sometime prior thereto, but just
16 when I can't give you a definite answer.

17 Q Do you think it was during 1972?

18 A It was either late 1971 or early 1972. Our
19 attorneys had thrown up their hands. They came to
20 us and said, "We cannot get together with these
21 people to work out an agreement, and we go back to
22 them after we have gotten approval from the trustees,
23 and then they hedge."

24 And then they just threw up their hands
25

Duffey

48

1
2 and said, "We can't work with these people. We
3 can't proceed further."

4 When that was, I can't give you a de-
5 finitive date.

6 Q As far as you know, that was the reason
7 that the Fund did not proceed with the plan? Finan-
8 cing the plan?

9 A Yes.

10 Q At this point, was there a specific meet-
11 ing at which the trustees made a formal decision not
12 to go forward with financing Neisco's arrangement?

13 A No.

14 Q Do you think there was such a meeting?

15 A I think there was.

16 Q Of all the trustees?

17 A Either all the trustees or of the sub-committee
18 of the trustees.

19 Q Were you a member of the sub-committee of
20 the trustees?

21 A Yes.

22 Let me say this, in that regard: The
23 attorneys had control of the situation, and they had
24 authority to proceed along the lines of the proposal
25

Duffey

49

1
2 that they had outlined to us, and if they could not
3 achieve that plan that they were undertaking what-
4 ever action they deemed in the best interests of
5 the trust.

6 Q When you say your attorneys, I would like
7 you to be more specific.

8 Did the trustees grant this authority to
9 any one attorney in particular, or two or three, and,
10 if so, who?

11 A The attorneys that were handling the case, Radom
12 and Teitelbaum, and Mr. Vogel's firm here in New York
13 was in constant consultation with Mr. Radom.

14 Q Do I understand your testimony correctly,
15 then, that at some point the attorneys came back and
16 told the trustees that they could not reach an agree-
17 ment with Neisco along the lines that had been pro-
18 posed, and for that reason the trustees decided not
19 to go forward with the arrangement?

20 A In essence, that is -- they reported back to us,
21 yes.

22 Q Do you know whether there were any other
23 reasons that the trustees decided not to go forward
24 with the arrangement?
25

1
2 A I know of no other reasons.

3 Q Are you aware that your attorneys ad-
4 vided the Bankruptcy Court that the reason, at one
5 point, for not proceeding with the arrangement was
6 that there had been an indictment on a gentleman
7 connected with the Fund on the basis of the fact that
8 he had allegedly taken a bribe from Mr. Horvath?

9 A I am not aware of anything that our attorneys
10 presented to the Court.

11 MR. STRUMPF: Off the record.

12 (Discussion off the record.)

13 Q Are you aware now today that there was
14 an indictment and a trial of a certain gentleman re-
15 garding an alleged bribe that he took from Mr. Horvath?

16 A I am aware of that.

17 Q When did you first become aware of that
18 indictment, if you recall?

19 A Shortly after it came down.

20 Q Do you remember approximately when that was?

21 A No.

22 Q Do you know what year it was in?

23 A I believe it was in 1971.

24 Q To your recollection, then, you believe
25

1
2 it was during the Chapter XI proceeding?

3 A To the best of my recollection, it was after
4 the Chapter XI proceeding, if the Chapter XI proceed-
5 ing was filed in November of 1969.

6 Q Did the trustees discuss that indictment
7 relating to the Chapter XI proceeding of Neisco?

8 A No.

9 Q They did not discuss that at any general
10 meeting of the trustees, I take it?

11 A Not to my recollection.

12 Q Did you discuss that indictment with the
13 Fund's attorneys?

14 A No.

15 Did we discuss the indictment with the
16 Fund's attorneys?

17 My answer would be --

18 MR. VOGEL: In connection with Neisco?

19 A (Continuing) Not in connection with Neisco.

20 Q Do you have any records of your own at
21 your office or elsewhere which would indicate when ,
22 exactly, the trustees decided not to go forward with
23 financing the Neisco arrangement?

24 A I don't personally have any records, but I would
25

Duffey

53

1
2 the trustees' meetings relating to the Neisco matter
3 from July of 1969 through March of 1972?

4 MR. VOGEL: If the records are relevant to
5 this action, we will make them available in Chicago
6 for your inspection.

7 MR. STRUMPF: Do we agree that relevancy
8 is two-fold? Not only at our retention, but
9 at our continued representation of the debtor
10 and debtor in possession in the Chapter XI?

11 MR. VOGEL: If there has been no reten-
12 tion, then how would your continued representa-
13 tion at the retention of someone else have any
14 relevancy to the Fund?

15 MR. RADOM: The record is abundantly clear
16 that you did represent and have continued to
17 represent Neisco from the very inception of
18 these proceedings, and we have no argument or
19 controversy about that. And I say again that
20 the minutes, if they are relevant to your re-
21 tention, should be made available to you.
22 But if they are not, however, if there is no-
23 thing in the record to indicate this issue or
24 anything which would shed light on the issue,
25

Duffey

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2 the answer is we are not going to give you the
3 opportunity of going on a fishing expedition.

4 MR. STRUMPF: One of the issues in this
5 case, obviously, is whether or not the Fund
6 either agreed or represented that it would pay
7 the fees of the plaintiff in this case.

8 MR. RADOM: Right.

9 MR. STRUMPF: If, in fact, the Fund did
10 either agree to pay or represented that it would
11 pay those fees, then the actions which the Fund
12 took in the Chapter XI proceeding are relevant.

13 MR. VOGEL: Can we go off the record?

14 MR. STRUMPF: Let me finish. I am asking
15 at this time whether you will deliver to us
16 copies of all of the minutes of the trustees'
17 meetings relating only to Neisco during the Chap-
18 ter XI proceeding.

19 MR. VOGEL: The answer to that is no.

20 We will make available to you in Chicago
21 the portions of the minutes as they relate to
22 the lawsuit. That is, the retention by your
23 firm, if such retention actually occurred,
24 which is your allegation.
25

Duffey

54-A

MR. STRUMPF: Off the record.

(Discussion off the record.)

MR. STRUMPF: No further questions.

(Whereupon, at 11:50 A.M., the examination was concluded.)

Subscribed and sworn to before me

this _____ day of _____ 1973

1
2
3 I, MARIAN J. DuVAL, of 140 Nassau Street,
4 New York, New York, do hereby certify that the
5 within deposition, given by THOMAS J. DUFFEY,
6 which was taken before me on January 16, 1973,
7 at the offices of Ballon, Stoll & Itzler, Esqs.,
8 was reported stenographically by me and reduced
9 to typewriting under my supervision, and I
10 certify that the said deposition is a true record
11 of the testimony given by the witness therein.

12 I further certify that I am not an
13 attorney associated with, or an employee of,
14 any attorney for the parties in said action
15 and have no interest whatsoever in the above,
16 nor have I any consanguinity or affinity to
17 any of the parties in this action.

18
19 Marian J. DuVal
20
21
22
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25

PLAINTIFF'S EXHIBIT 24 -- TRANSCRIPT OF DEPOSITION OF
DEFENDANT ALBERT D. MATHESON, TAKEN JANUARY 16, 1973.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

BALLON, STOLL & ITZLER, :

Plaintiffs, :

-against- :

THOMAS J. DUFFEY, HERMAN A. LUEKING, JR., :

ALBERT D. MATHESON, WILLIAM J. KENNEDY, :

JOHN A. MURPHY, JACK A. SHEETZ, JOHN :

SPICKERMAN, FRANK E. FITZSIMMONS, ROBERT :

HOLMES, DONALD PETERS, WILLIAM PRESSER, :

ODELL SMITH, ROY L. WILLIAMS, FRANK :

H. RANNEY and JOSEPH MORGAN, not individu- :

ally, but as Trustee under a Common Law :

trust of the Central States Southeast :

and Southwest Areas Pension Fund, :

Defendants. :

-----X

1450 Broadway, New York, New York
January 16, 1973 - 11:50 A.M.

EXAMINATION BEFORE TRIAL of ALBERT D. MATHESON,

a Defendant herein, taken pursuant to notice dated
December 5, 1972, at the offices of Ballon, Stoll &
Itzler, Esqs., at the above place and time, before
Marian J. DuVal, a Notary Public of the State of
New York.

ACME REPORTING SERVICE
SHORTHAND AND STENOGRAPHIC REPORTERS
NOTARIES PUBLIC
140 NASSAU STREET
NEW YORK CITY
TELEPHONES: BECKMAN 3-0664-0665-0666

A p p e a r a n c e s :

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BY: BURTON D. STRUMPF, ESQ.,
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JOSEPH RADOM, ESQ.,
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1800 National Bank Building,
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and

SCHAFFER, DALE, VOGEL & TAVROW, ESQS., OF COUNSEL,
Attorneys for Defendants,

410 Park Avenue,

New York, New York.

BY: LAURENCE VOGEL, ESQ.

- - -

IT IS HEREBY STIPULATED AND AGREED by
and between counsel for the respective parties
hereto that the sealing, certification and fil-
ing of the within examination be, and the
same hereby are waived;

IT IS FURTHER STIPULATED AND AGREED that
the within examination may be signed and
sworn to before any notary public or an officer
authorized to administer oaths with the same
force and effect as if signed and sworn to
before a Clerk of this Court;

IT IS FURTHER STIPULATED AND AGREED that

1
2 all objections except as to the form of the
3 question be, and the same hereby are, reserved
4 to the time of the trial;

5 IT IS FURTHER STIPULATED AND AGREED that
6 a copy of this deposition shall be furnished
7 to the attorneys for the defendants by the
8 attorneys for the plaintiffs, without charge.
9

10 - - -

11 A L B E R T D. M A T H E S O N, one of the de-
12 fendants herein, having been duly sworn by a
13 Notary Public of the State of New York, was
14 examined and testified as follows:

15 EXAMINATION BY

16 MR. STRUMPF:

17 Q Will you state your full name and address?

18 A Albert D. Matheson, an attorney. Offices are
19 located in Detroit, Michigan, Suite 1700, 1 Woodward
20 Avenue, Detroit 48226.

21 Q You also reside in Detroit?

22 A I also reside in the City of Detroit. My home
23 address is 16540 Warwick, Detroit 48219.

24 Q Are you a trustee of the Central State
25 Southeast and Southwest Areas Pension Fund?

Matheson

4

1
2 A I am an employer trustee under the pension fund.

3 Q What do you mean by employer trustee?

4 A We have sixteen trustees. Eight of the tru-
5 stees represent the employer associations and eight
6 are selected by the unions. It is a joint board.

7 Q Is this a full-time job for you being
8 trustee?

9 A No, it is not.

10 Q Do you get paid as trustee?

11 A You get paid travel expenses, and a per diem
12 when you are out on special assignments.

13 Q Is your full-time profession or vocation
14 as an attorney?

15 A Yes.

16 Q Did you represent the Fund as an attorney?

17 A No.

18 Q Your only connection with the Fund, do I
19 understand correctly, is as a trustee?

20 A My only connection with the Fund is as a trustee.

21 Q How long have you been a trustee?

22 A Since the Fund was formed in 1955.

23 Q Are you familiar with the company known
24 as Neisco, Inc.?
25

Matheson

5

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2 A Am I familiar with the company itself?

3 Q Yes.

4 A Somewhat, yes.

5 Q Are you familiar with the transactions
6 between the Fund and Neisco?

7 A I know the transactions took place, but I
8 couldn't give them to you in detail without the
9 records in front of me.

10 x Q Are you familiar that Neisco made certain
11 loans from the Fund?

12 A Oh, I am familiar with the fact that the Fund
13 made loans to Neisco, yes.

14 Q Do you know when those loans were made?

15 A Not without examining the records. I couldn't
16 tell you.

17 Q What records would you have to examine?

18 A I would have to look at the Fund's records. It
19 has been the last two or three years.

20 Q It has been within the last two or three
21 years?

22 A That is my recollection. Within the last two
23 or three years we have made at least one loan to
24 Neisco.
25

Matheson

6

1
2 Q Do you know when the first time was that
3 the Fund made loans to Neisco?

4 A Not without checking the records. I did not
5 look at the records. I couldn't tell you.

6 Q If I told you that Mr. Duffey testified
7 that he believed that the loans were first made in
8 1967, would that sound right to you?

9 A About five years ago? It could be. We made two
10 separate loans.

11 Q Do you know how much those loans were?

12 A To the best of my recollection, I think the first
13 loan was about a million and a half dollars, and then
14 the second loan, I believe, was around one million six
15 hundred fifty thousand. There were two separate loans.

16 Q To your knowledge, did there come a time
17 when Neisco was unable to pay its loans back to the
18 Fund?

19 A Yes, there was.

20 Q When was that?

21 A I would have to answer the question this way:

22 The second loan was made after Neisco
23 got into troubles and we sat down to discuss what is
24 the best way to protect our investment, but they also
25

Matheson

7

1
2 got in trouble after the second loan was made.

3 Q Let us go back a second. The second loan
4 that you are referring to, is that the loan that was
5 made during the Chapter XI proceeding?

6 A I think that is when that was.

7 Q Let us stick to the loans made prior to
8 Neisco's Chapter XI proceeding.

9 A All right.

10 Q Did there come a time that you became
11 aware that Neisco was in financial difficulty?

12 A Yes.

13 Q Do you remember when that was?

14 A It had to have been probably six months before
15 these proceedings were filed, I would guess.

16 Q Six months prior to the ChapterXI?

17 A Over a period of time.

18 Q How did you find out?

19 A I found out, to the best of my recollection,
20 we were advised that they needed more funds or they
21 would have to close up the business.

22 Q Who advised you of that?

23 A I couldn't give you any specific individuals.
24 All of the information -- I did obtain the information.
25

Matheson

8

1
2 It had to be from our staff. Either our lawyers or --
3 it had to be our lawyers advising myself, as well
4 as the other trustees and the administrative committee.

5 Q How would your lawyers have found out that
6 Neisco was having financial difficulties?

7 A To the best of my knowledge, I recollect we
8 received the request for more funds, and also there
9 were outstanding bills to be paid and they had no money
10 to pay them.

11 Q Would the request for more funds be made
12 to your lawyers?

13 A I believe at that time that Mr. Horvath gener-
14 ally -- Mr. Horvath and also that other gentleman's
15 name? Starts with a "P".

16 MR. VOGEL: Polish?

17 A (Continuing) Horvath and Polish communicated
18 with Mr. Joe Teitelbaum, who is one of our attorneys,
19 and also gave the information to the steering com-
20 mittee and the trustees. This is generally how it
21 worked.

22 Q Did he give any information over the
23 telephone or did he call a meeting for that purpose?

24 A I couldn't say positively, although I do know
25

Matheson

9

1
2 that he would attend steering meetings. The steer-
3 ing committee was the smaller group of trustees that
4 discussed this problem.

5 Q Were you a member of the steering committee
6 in 1969?

7 A I have been a member of the steering committee
8 since it was formed.

9 Q What is the function of the steering
10 committee?

11 A The function of the steering committee is you
12 could call it like an executive board of a corpora-
13 tion that handles the unusual problems which come up
14 during the interim when the full board is not meeting.

15 Generally, our full board meets four times
16 a year for general meetings, and also they have
17 special meetings. In between, when problems come up,
18 the steering committee meets and takes care of them,
19 and they act as sort of a clearing house as to what
20 will be sent down to the full board and what won't
21 be sent down to the full board.

22 Q How many people serve on the steering
23 committee?

24 A I think the figures vary from about five to eight.
25

Matheson

10

1
2 Q To the best of your recollection, in 1969,
3 who else was a member of the steering committee with
4 yourself?

5 A To the best of my recollection, in 1969, the
6 steering committee would have been myself, Tom Duffey,
7 C. J. Madigan.

8 Q Is he deceased?

9 A He is deceased now. He just died here last year,
10 and from the union side -- I think that was Mr. Presser
11 and Mr. Peters. I forget who the other gentleman was,
12 but generally there were six people.

13 Q You have testified that during the six
14 months prior to the filing of the Chapter XI pro-
15 ceeding, from time to time Neisco was asking for
16 more funds?

17 A That is my recollection.

18 Q Were more funds given to Neisco?

19 A No, not that I recollect.

20 Q What course of action did the Fund take?

21 A They refused to give them the money. Other
22 than that? Other than refusing to give Mr. Horvath
23 any more directly or whether it was going to be under
24 his control, a program was worked out involving the
25

Matheson

11

1
2 bankruptcy proceeding.

3 Q The Chapter XI proceeding?

4 A Chapter Xi proceeding.

5 Q Who worked out that program then for the
6 Chapter XI?

7 A I can't tell you who worked out the program.

8 I know who worked on it. Mr. Radom, I
9 think Joe Teitelbaum and Mr. Horvath and his repre-
10 sentatives.

11 Q How was that worked out?

12 MR. VOGEL: If you know.

13 Q If you know.

14 A I couldn't tell you as to how they worked it out.
15 All I know is they had a large number of meetings.

16 Q When were these meetings?

17 A Where, or when?

18 Q When?

19 MR. VOGEL: If you know.

20 A I don't know. I couldn't give you exact dates.

21 Q Approximately? The month.

22 A I couldn't even give you that.

23 Q Would you say that a Chapter XI proceeding
24 was worked out, as you say, six months before the
25

Matheson

12

1
2 actual filing?

3 A I couldn't tell you that exactly.

4 Q Do you think it was as long as six months?

5 A I couldn't say.

6 Q Did you ever meet Mr. Horvath?

7 A Did I ever meet Mr. Horvath?

8 Q Yes.

9 A Postively did.

10 Q Were you at any meetings at which a
11 Chapter XI proceeding was discussed with Mr. Horvath?

12 A I can recollect one meeting that took place
13 in New York, but I don't remember the exact date.
14 I had to be in New York, and I attended a meeting
15 where there was a discussion of Horvath's problems
16 and Neisco's problems and Masmo's problems.

17 Q Where did that meeting take place?

18 A I don't remember whose office it was, but it
19 was in New York City.

20 Q Was it at Neisco's office?

21 A I don't remember whose office it was.

22 Q Do you remember whether it was at the
23 office of Ballon, Stoll & Itzler?

24 A No, I couldn't say whose office it was.
25

M.theson

13

1
2 Q Do you know Mr. Ballon, one of the plain-
3 tiffs in this case?

4 A I believe that is the first time I met him.

5 Q You believe that was the first time you
6 met him, here in New York?

7 A I saw him today.

8 MR. VOGEL: I think the witness said that
9 when he met him in this room earlier today,
10 it was the first time that he met him.

11 Is that correct?

12 THE WITNESS: No. When I saw him walk
13 in here, I knew I had seen him somewhere, and
14 my recollection was that I saw him with Mr.
15 Horvath at a prior meeting in New York, at which
16 time I was told that he was Mr. Horvath's per-
17 sonal attorney. Do you know who told me that?
18 Mr. Horvath told me.

19 Q Do you remember meeting Mr. Ballon in
20 Chicago?

21 A No, I don't.

22 I may have met him there, too, but I don't
23 recollect it.

24 Q Do you remember meeting any attorney for
25

Matheson

14

1
2 Neisco in Chicago during the fall of 1969?

3 A I have no present recollection of it.

4 Q What is the nature of your legal prac-
5 tice, generally?

6 A My legal practice?

7 Q Yes.

8 A Well, our company does corporate work, inter-
9 state commerce, commercial work, public utility work,
10 and rate work.

11 Q Do you do any bankruptcy or insolvency
12 practice?

13 A No bankruptcy whatever, and also labor.

14 Q Did you have any discussion -- either
15 yourself or with other trustees -- with Mr. Radom or
16 Mr. Teitelbaum or both concerning the filing of a
17 Chapter XI proceeding by Neisco?

18 A I sat in on a number of meetings, being on an
19 administrative committee, and also discussion took
20 place at our full board meeting as to what was the
21 best way that the Fund could follow in order to pro-
22 tect our investment, because it appeared that Mr.
23 Horvath was no longer capable of trying to work any
24 program out.
25

Matheson

15

1
2 Q Did the trustees or the steering committee
3 or both come to a conclusion in this respect at any
4 of those meetings?

5 A They came to a conclusion positively that
6 Mr. Horvath was not able to work anything out, and
7 for that reason we could not make any more advances
8 to him directly.

9 Q No more advances to him directly?

10 A Where he was going to remain in charge and
11 control.

12 Q Under what conditions did the trustees
13 decide that they would make loans to Neisco?

14 A I don't remember the exact details, but whatever
15 was worked out I believe involved the Chapter XI pro-
16 ceeding. Our file would indicate what this was. I
17 don't know. I don't remember presently, at this time,
18 but that was the way.

19 Q Were minutes taken of all of the meetings
20 that you attended in this connection?

21 A To the best of my knowledge, there was -- back
22 then, there would have been a reporter present at
23 our official steering committee meetings and also
24 the full board meetings.
25

Matheson

16

1
2 Q Do you have copies of those minutes?

3 A I don't have them personally, but I would say
4 that we should have transcripts of the minutes in
5 our office in Chicago, Fund office.

6 Q When a Chapter XI was discussed as a
7 possibility -- that Neisco might file a Chapter XI
8 proceeding -- did you personally ask your attorneys
9 the ramifications of a Chapter XI proceeding?

10 A I don't follow that. Did I ask for the rami-
11 fications of a Chapter XI proceeding? What do you
12 mean by that?

13 Q Did you ask the attorneys what it meant,
14 insofar as Neisco was concerned, if they filed a
15 Chapter XI proceeding?

16 A I didn't ask them any such specific question as
17 that.

18 Q Do you recall whether any of the trustees
19 asked such a question? The other trustees?

20 A I don't recollect offhand.

21 Q Do you recall whether you or any of the
22 other trustees, at any of its meetings, asked the
23 attorneys about the possible ramifications of a
24 Chapter XI proceeding on the Fund?
25

Mtheson

17

1
2 A I don't recollect.

3 Q In other words, you don't recollect any
4 discussion about the ramifications of a Chapter XI
5 proceeding and what it meant?

6 A I didn't ask them any questions. I don't
7 remember anything about that.

8 Q I didn't ask you that.

9 I asked you whether there was any discus-
10 sion, to your knowledge --

11 A I don't know.

12 Q Am I to understand, then, that the trus-
13 tees and the attorneys discussed the fact that Neisco
14 might file a Chapter XI proceeding, and on that basis
15 the trustees might advance more moneys, and that was
16 all that was discussed?

17 MR. VOGEL: No, he didn't say that.

18 He said that he did not recollect anymore
19 than that today.

20 Q I am asking if that is your recollection
21 then that that was all that was discussed?

22 A I would have to answer that this way: The meet-
23 ings that I attended, as I told you, I never prac-
24 ticed bankruptcy law. There was only one thought
25

Matheson

18

1
2 in mind as far as myself and the other people were
3 concerned; that we were not going to hand out any
4 more money to George Horvath, because we never knew
5 what happened to it when we gave it to him. We were
6 out to protect the interests of the Fund and look
7 for any means whereby we were convinced that this
8 could still be made a going concern, and if we could
9 keep it alive so that they could pay us back what
10 they owed us, then, fine, we are in good shape. But
11 we did not want any money given away where George
12 could handle it, and I believe at the time there was
13 a discussion of the possibility of going through
14 this Chapter XI proceeding; that with the Court super-
15 vising expenditures, that this would be the way to
16 protect the handling of the supervision of the addi-
17 tional funds and protect the interests of the Fund,
18 so this is the -- it was explained to us in that way.

19 Q Do you recollect some discussion about
20 the possible supervision by the Court in a Chapter XI
21 proceeding? Was there any discussion of exactly
22 what the result of a Chapter XI proceeding would be?
23 The ultimate result?

24 A I don't recall exact discussion, except that I
25

Matheson

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2 was led to believe that once it was made a going
3 concern, we were in an easier position and would be
4 able to get our mortgages paid off. That was our
5 motive.

6 Q Do you recollect whether there was a dis-
7 cussion on how it would evolve --

8 A The details --

9 Q (Continuing) -- coming out of the Chapter XI
10 and becoming a going concern again?

11 A I don't remember that part of the discussion,
12 or that discussion, no.

13 Q To your knowledge, did any of the trustees
14 ask what it would cost to put through a Chapter XI
15 proceeding?

16 A I don't remember if anybody specifically asked,
17 although I think we all knew it was going to cost some-
18 thing to go into Chapter XI.

19 Q How did you know?

20 A I know it to be a fact, because I am a lawyer.

21 Q As a lawyer?

22 A It costs money to go to court.

23 Q As a lawyer, what did you think -- not in
24 terms of necessarily dollars and cents -- but what
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Matheson

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2 type of costs did you think would be involved in a
3 Chapter XI proceeding?

4 A Chapter XI proceedings, you have to have —
5 you are going to get your Receiver, and he is going
6 to have certain expenditures, which the Court is
7 going to order paid, and there are other expenses.

8 Q Did you know that creditors would have
9 to be paid something? General creditors?

10 A Offhand, I wasn't too sure whether or not the
11 general creditors or any — I know that any creditors
12 that came up after the Receiver took hold would be
13 paid.

14 Q Did you give any consideration as to
15 whether or not the debtor would have to retain
16 attorneys?

17 MR. VOGEL: When you say "you," who are
18 you referring to?

19 MR. STRUMPF: As trustee at any of these
20 meetings.

21 MR. VOGEL: As a trustee?

22 MR. STRUMPF: Yes.

23 A I don't remember any discussion of it.

24 Q Did you, as a trustee, in considering this
25

Matheson

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question, consider possible fees of an attorney for a debtor?

A No, I didn't. We had our lawyer, and Mr. Horvath, whom I considered a party on the other side, had his lawyer. I knew we would have to pay our attorneys' fees.

Q Have you ever represented a debtor in Chapter XI?

A I have never participated or acted in any Chapter XI proceeding. I have always farmed that work out from our office.

Q Was there any discussion in terms of dollars and cents as to what it would cost to get Neisco out of Chapter XI?

A I don't recollect it at the present time, if there was; not without looking at the transcript.

Q Prior to November 24, 1969, which was the date of the filing of the petition, do you recall meeting Fred Ballon?

A Yes. I had met Fred Ballon.

Q That was at the meeting that you previously testified about here in New York?

A I remember I met him here in New York at least

Matheson

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1
2 once.

3 Q You don't recall where that meeting was?

4 A No.

5 It was in the city, I know that, downtown
6 area; but I don't know whose office it was.

7 Q Do you remember who was present?

8 A To the best of my knowledge, there was Mr. Radom,
9 myself, George Horvath; Mr. Ballon, who was intro-
10 duced to me as George's personal lawyer, and there
11 were a couple of other people. I don't remember who
12 they were now.

13 Q Was Mr. Duffey present, to your knowledge?

14 A I don't recollect whether Tom was there at the
15 time or not, at that time, the meeting that I attended.

16 Q Do you know Mr. Dorfman?

17 A Yes, I know Mr. Dorfman.

18 Q Was he present?

19 A I don't recall if Alan was at that meeting or not.

20 Q Do you know Mr. Eisenrod?

21 A Yes. I believe Mr. Eisenrod got to the meeting
22 before it was over. I don't remember if he went in
23 when Joe and I arrived, but I think during the course
24 of the day, I think he did come in.
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Matheson

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2 Q Who called this meeting, if you know?

3 A That I can't tell you, who set it up.

4 Q Who asked you to come to the meeting?

5 A Well, I was going to be in New York on some other
6 matters, and Mr. Radom and Mr. Teitelbaum said, "Since
7 you are going to be in New York, you might as well
8 attend and listen to what is going on."

9 Q Did they tell you before the meeting what
10 the purpose of it was?

11 A I think this was a part of the discussion that
12 had been carried on with George Horvath as to how they
13 are going to work out the problems of Neisco and
14 Masmo. They had a number of meetings with Mr. Horvath.
15 This was just one of them.

16 Q Do you recall specifically what was discussed
17 at this meeting?

18 A Truthfully, I don't.

19 I do know that we separated, and we were in
20 one room and George and his people were in another
21 room, and the lawyers walked back and forth between
22 the two rooms. Truthfully, I don't recollect in de-
23 tail what was discussed.

24 It involved trying to work out a program
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Matheson

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2 involving Neisco.

3 Q Was a program worked out?

4 A That day?

5 Q Yes.

6 A I couldn't tell you.

7 I know that we discussed various problems
8 that had arisen, but as to whether or not it was
9 completely worked out all on that day, that I couldn't
10 tell you.

11 Q Was there any understanding as to whether
12 or not a Chapter XI would be filed by Neisco?

13 A Eventually there was, but I couldn't tell you
14 if it was finalized on that day that I was in New York.

15 Q Was there a discussion of the possibility
16 of filing a Chapter XI?

17 MR. VOGEL: On that day?

18 MR. STRUMPF: On that day.

19 A I couldn't tell you positively.

20 Q Well, then --

21 A (Continuing) What day was that? Maybe that
22 would help me. Supposedly? What day were we in
23 New York?

24 Q I believe that you were here on either
25

Matheson

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November 11th or November 19th or both, I am not sure.

A Of '69?

Q Yes.

A That Chapter XI was filed when?

Q November 24th.

A If those are the dates, I would have to truthfully say that we must have discussed the filing of the Chapter XI, some of the details.

Q Was this the general nature of the discussion, then?

A I don't remember all the details, but I do know this: that when our lawyers talked to the board and the steering committee in Chicago, there were always problems.

Mr. Horvath wanted No. 1 changed, he wanted No. 2 changed, he wanted No. 3 changed. That just kept dragging on. That is why I say there were a number of meetings. I would say that during the course of the discussions between Mr. Horvath, Mr. Radom and Mr. Teitelbaum, there were at least a number of times that Mr. Horvath and our attorneys thought they had a meeting of the minds, and after they came back and discussed it with us and convinced us that this would

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3 be a good course for the trustees to be following
4 and we had approved it, then they would come back
5 and tell us that Mr. Horvath had changed his mind
6 during the interim. When they came back to us, and
7 then we would start all over again on certain points.

8 Q Let me understand: The meeting of the
9 minds that you described, what did the Fund want?

10 A The Fund wanted to protect their investment.

11 Q Did the Fund recommend the course of action
12 for that purpose?

13 A The course of action which finally took place?

14 Q No. I am asking you, did the Fund recom-
15 mend any course of action for the purpose of protecting
16 its money?

17 MR. VOGEL: At which time?

18 MR. STRUMPF: At the meeting in November
19 of 1969.

20 A The various meetings that took place between
21 Mr. Horvath and the attorneys of the Fund was as a
22 result that the trustees, based on representations
23 made to them, were convinced that Neisco could still
24 be made a going concern, built up into a going or-
25 ganization, thus making it possible for our loans to

Matheson

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2 be repaid. That was approved as principle. The de-
3 tails and mechanics of the program were to be worked
4 out between our attorneys and Mr. Horvath and his
5 personal attorney.

6 The meetings that I am referring to were
7 trying to finalize what we had approved in principle.
8 This is where we ran into trouble.

9 Q If I understand you correctly, there was
10 a hope of rejuvenating a company that was then in
11 financial difficulty.

12 I am asking you whether or not the Fund
13 and its trustees or its trustees recommended a par-
14 ticular course of action which would get Neisco out
15 of its financial difficulty?

16 A I don't know what you mean by particular course
17 of action.

18 Q Did the Fund recommend that a Chapter XI
19 be filed?

20 A I answered that before. I don't recollect who
21 first thought up the Chapter XI as the best method to
22 use in order to accomplish the purpose we had in mind.
23 I don't recollect who came up with that idea, but we
24 did subsequently approve it.
25

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2 Q To your knowledge, did Neisco or its
3 representatives object to the filing of a Chapter XI
4 petition?

5 A Well, I guess I have to answer that they did.
6 They objected, provided — they were willing not to
7 object to it. Mr. Horvath was willing to go along,
8 provided that we went along with certain conditions
9 he set up.

10 Q What were those conditions?

11 A There were a number of them. I don't know them
12 in detail, but one of them involved his brother, and
13 he had to be kept on the payroll for five or ten
14 years. Various other items. There were about half a
15 dozen items being kicked back and forth.

16 Q Was one of the items in question whether
17 he would finance a Chapter XI proceeding?

18 A I don't recollect that.

19 Q There was no discussion about that?

20 A I am not going to tell you there was no dis-
21 cussion.

22 I say I have no personal recollection now,
23 unless I went through our transcript of the minutes
24 of the meetings I attended.
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Matheson

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2 Q During these months prior to the filing
3 of the Chapter XI, did the trustees ask any accoun-
4 tant or accountants to review the business of Neisco
5 to determine exactly what position it was in, to your
6 knowledge?

7 A To the best of my recollection, we did have
8 some discussion with our own auditors now.

9 Q Who were your own auditors?

10 A I think Mr. Weissner.

11 Q You had some discussion with Mr. Weissner?

12 A I believe he did check some financial state-
13 ments and records that were submitted to us.

14 Q Where did he obtain those?

15 A I assume he obtained them from Mr. Horvath. If
16 he did not, our lawyers did.

17 Q Did the trustees ask Mr. Weissner to make
18 some type of audit or examination of Neisco's books
19 and records?

20 A I don't recollect that at the present time.

21 Q Did, in fact, Mr. Weissner report to the
22 trustees or to the steering committee some informa-
23 tion concerning Neisco's financial records?

24 A I believe he did, but I don't remember what the
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Matheson

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2 report was. It would be in our transcript of our
3 minutes. I couldn't tell you right now what his
4 report was.

5 Q Do you remember, generally, what kind of
6 condition Neisco was in, according to that report?

7 A It was not in very good condition.

8 Q Did Neisco, to your knowledge, have any
9 funds with which to operate?

10 A They may have had some accounts receivable, but
11 I don't remember if they had any cash funds.

12 Q Was there any discussion during these
13 meetings in October and November -- or whenever they
14 were in 1969 -- as to where Neisco would obtain the
15 funds to operate during the Chapter XI?

16 A I believe there was.

17 Q What was the nature of these discussions?

18 A To the best of my recollection now, the discussion
19 was that if there was to be a Chapter XI, we would
20 have to make additional loans to Neisco.

21 Q For what purposes?

22 A For the purpose of building up the company again,
23 because they had no money, cash money, to the best of
24 my recollection.
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Matheson

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No. 2, nobody would lend them any.

Q To the best of your recollection, Neisco neither had cash nor the ability to borrow money from any other source?

A Nor the ability to borrow money.

Q So that any moneys -- according to your recollection, any moneys that Neisco would need during the Chapter XI proceeding, or to get out of the Chapter XI proceeding, would have to come from the Fund?

A Up to a certain point. I believe that is where we came up with the figure they were going to advance no more than a million, six hundred and fifty thousand dollars., to take care of certain items. I don't remember the exact items.

Q Do you remember any of the items?

A Not without looking at the documents again.

Q What documents would you have to look at?

A The exhibits and the reports they had at the meetings. I believe you find those in the file of the transcript. I am sure.

Q Did you say that you met Mr. Ballon on more than one occasion?

A I know I met him at least once, when I was in

1
2 New York. I know I met that gentleman.

3 Q When did you first find out that the firm
4 of Ballon, Stoll & Itzler, which was then known as
5 Ballon, Stoll & Shyman, was going to represent
6 Neisco in its Chapter XI proceeding?

7 A I couldn't tell you that, but I had heard of
8 Mr. Ballon from George Horvath, that he was his per-
9 sonal attorney.

10 Q When did he tell you that?

11 A Oh, probably sometime during my meetings with
12 George and discussions with him.

13 Q Did he tell you that Mr. Ballon would be
14 representing Neisco in a Chapter XI proceeding, if
15 it occurred?

16 A No, he didn't.

17 He just told me that Mr. Ballon was his
18 attorney.

19 Q Earlier in your testimony, you testified,
20 I believe, that the trustees were advised by your
21 attorneys that you would have supervision of any money
22 that you advanced to Neisco during the Chapter XI
23 proceeding.

24 What was the manner in which the Fund
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2 obtained this supervision after the Chapter XI pro-
3 ceeding was filed?

4 A Well, I don't remember the exact details, except
5 that I believe that was about the time that Mr. Rugen-
6 dorf got into the proceedings as our representative.

7 Q How did Mr. Rugendorf get into the pro-
8 ceedings as your representative?

9 A I don't know what you mean by how.

10 Q Was he requested to do so by the trustees?

11 A Mr. Rugendorf?

12 Q Yes.

13 A I am sure that we selected Mr. Rugendorf our-
14 selves.

15 Q Did you select him at a meeting of the
16 steering committee?

17 A I don't exactly know where we selected him.

18 Q Who was Mr. Rugendorf?

19 A I don't know what you mean by who he was. I
20 know he was a gentleman that I was introduced to.
21 I mean I first met him here in New York.

22 Q When was that you were introduced to him?

23 A I don't know the exact date. It was prior to
24 the proceedings being filed that I met Mr. Rugendorf.
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Matheson

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Q Prior to the Chapter XI proceeding?

A I had met him prior to that.

Q Who introduced you to him?

A I think Mr. Sol Eisenrod.

Q What was his profession or business, if you know?

A I couldn't tell you that.

Q Do you know whether he was an accountant?

A To tell you the truth, I don't know if he was an accountant or not.

Q What did the trustees request of him?

MR. VOGEL: If anything.

A I have to answer that this way: Mr. Rugendorf was to be our watchdog to see that any moneys that he handed out were going to be expended to the interests of the company, and he was going to see that it was properly managed. As a matter of fact, I believe he acted as a manager.

Q Where?

A Well, the company is down in North Carolina. I think they have an office in New York City, and down in the Carolinas is where the factory is.

Q Do you know specifically what he was supposed to do?

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3 A Just watch our interests.

4 Q Was he to be paid by the Fund?

5 A I believe we paid him directly.

6 Q Do you know how much he received?

7 A I don't recollect it right now.

8 Q Do you know the net --

9 A (Continuing) Our books will show that.

10 Q Your books would show that?

11 A Checks go right to our books. To the best of
12 my knowledge, I think we paid him directly.

13 Q Will you submit to us copies of the
14 records indicating payment by the Fund to Mr. Rugen-
15 dorf during the Chapter XI?

16 A I will check it out for you.

17 MR. VOGEL: We will stipulate that he was
18 receiving compensation for the Fund to act pur-
19 suant to the Court's order, which ordered that
20 all checks that were paid by Neisco be counter-
21 signed by Mr. Rugendorf.

22 MR. RADOM: Any other issue beyond that
23 would be objectionable anyway.

24 MR. STRUMPF: Did you say you would stipu-
25 late he was paid by the Fund?

Matheson

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MR. VOGEL: He was paid directly by the Fund to perform the services of counter-signing the checks that were authorized to be paid by the Court.

BY MR. STRUMPF:

Q In 1969, what was the function of Mr. Alan Dorfman for the Fund?

A In 1969?

Q Yes.

A I think at that time Alan was special consultant with the Fund.

Q Was that his principal business? Do you know?

A No. His principal business was the insurance business.

Q To your knowledge, did Mr. Dorfman meet with the trustees in connection with the Neisco problem in the fall of 1969?

A To the best of my recollection, Alan was at the meetings.

Q Do you remember whether Mr. Dorfman was at the meetings here in New York with Mr. Ballon?

A I don't recall him being in New York when I was

Matheson

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2 here.

3 Q Do you recall whether or not the trustees
4 received periodic reports from their attorneys about
5 the progress of the Chapter XI proceeding?

6 A I don't know about reports from the attorneys,
7 but I do remember receiving reports that were pre-
8 pared by Mr. Rugendorf about the progress as things
9 went along.

10 Q Those reports that Mr. Rugendorf would have
11 related to the operation of the business, is that
12 correct?

13 A The operation and how it was going.

14 Q Do you recall any reports from either Mr.
15 Radom or Mr. Vogel or any other attorney relating to
16 the legal or other proceedings in the Chapter XI?

17 A I don't remember that. Offhand, I don't re-
18 member that, but I do remember seeing reports that
19 Mr. Rugendorf had sent in. I don't remember if he
20 sent them in monthly, quarterly or what. As a matter
21 of fact, I think it was darned near monthly.

22 Q But you don't recall any reports about the
23 Chapter XI proceeding?

24 A I don't remember seeing anything about it.
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Matheson

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2 Q Did you ask any questions during the
3 Chapter XI proceeding as to how it was progressing?

4 A I don't recollect whether I asked questions
5 or not. I may have.

6 When you say as to the progress, in what
7 respect? How is it progressing?

8 Q Did you find out that a plan was ultimately
9 proposed to creditors?

10 A Well, I think I knew that.

11 Q Do you remember how much that plan was?

12 A I don't remember the exact details, but I know
13 that there was a plan in the offing discussed, but I
14 don't remember the exact details of it now.

15 Q Do you have any recollection as to how much
16 would have to be paid to general creditors, pursuant
17 to the plan?

18 A I don't remember the details.

19 Q Did there come a time during the Chapter XI
20 proceeding that anybody reported to you or to the
21 trustees or to the steering committee as to what the
22 entire cost of the Chapter XI proceeding would be?

23 A I couldn't say I recollect that now either.

24 Q Did there come a time when the trustees
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Matheson

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2 decided that they would not finance the Chapter XI
3 proceeding?

4 A I think that time did arrive.

5 Q When?

6 A I don't remember the exact date.

7 Q Approximately?

8 A Could not even give you an approximately.

9 Q Do you remember the reasons that the
10 trustees came to that conclusion?

11 A I couldn't tell you the exact reasons the trus-
12 tees came to that conclusion.

13 Q Do you recall whether or not the trustees
14 met to determine whether or not to proceed with the
15 Chapter XI proceeding, let us say, in late 1971?

16 A Any decisions that were made were made by the
17 trustees, so they had to meet.

18 You asked me whether I recollect what they
19 said. I don't recall what they said.

20 You asked me why I was not willing to go
21 along any further. I can tell you that real good.

22 Q Please. What was that?

23 A Because I had no confidence any more in Mr.
24 Horvath, and as far as I was personally concerned, the
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Matheson

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2 less we had to do with him, the better; so they just
3 called it off at that time.

4 Q When did you personally come to that con-
5 clusion?

6 A I guess, personally, I came to that conclusion
7 right after we got started.

8 Q But apparently, according to the court
9 records, the trustees as a group did not come to that
10 conclusion until much later.

11 A You are right. The trustees as a group didn't.

12 Q Do you recall a meeting, if there was such,
13 at which the trustees actually voted not to proceed
14 with the Chapter XI proceeding?

15 A No. I don't recall at the present time, but I
16 will check in our minutes.

17 Q You will check and give me that answer?

18 MR. RADOM: No. We will object to the
19 relevancy of the question and, therefore, would
20 not produce the minutes for this examination be-
21 cause we don't think it is material at all.

22 MR. STRUMPF: The witness said that he
23 would check the minutes to answer the question
24 to refresh his recollection.
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Matheson

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3 MR. RADOM: Well, you are assuming that
4 you are going to bring him back for further
5 interrogation, and we will reach that point later
6 on in this examination.

7 MR. STRUMPF: So the answer is no, he will
8 not examine those minutes to answer this ques-
9 tion?

10 MR. RADOM: If the issue is limited to the
11 retention of your firm, and you are asking him
12 to examine the minutes to determine if there
13 is any record or transcription of minutes on
14 file in Chicago, the answer is yes. Otherwise,
15 the answer is no.

16 MR. STRUMPF: The issue is -- or the ques-
17 tion is -- the reasons that the trustees de-
18 cided not to proceed with the Chapter XI pro-
19 ceeding.

20 MR. RADOM: It is immaterial.

21 MR. STRUMPF: Are you objecting on that
22 basis?

23 MR. RADOM: That's right.

24 MR. STRUMPF: I am going to reserve that
25 question as I have the others.

Matheson

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2 BY MR. STRUMPF:

3 Q To your recollection, did the decision
4 of the trustees not to proceed have anything to do
5 with the indictment of Mr. Dorfman?

6 A Are you asking me whether we turned it down be-
7 cause Mr. Dorfman was under indictment?

8 Q Yes.

9 A No.

10 Q Do you recall whether the indictment of
11 Mr. Dorfman was discussed by the trustees in relation
12 to the Chapter XI proceeding of Neisco?

13 A I don't recall whether we discussed his indict-
14 ment or not at that time, in reference to discussions
15 of Neisco. No, I don't.

16 Q Prior to the filing of the Chapter XI pro-
17 ceeding, did you have any discussions with Mr. Horvath
18 in which Mr. Horvath threatened to sue the Fund?

19 A I don't recollect any meetings prior to that
20 time, where Mr. Horvath threatened to sue the Fund.

21 He attended a number of our steering com-
22 mittee meetings. As a matter of fact, I think he even
23 appeared before one of the board meetings and had
24 discussions, but I don't remember any specific instances
25

Matheson

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that he was going to sue the Fund and what for.

Q Is your answer that you don't recollect?

A I don't recollect myself.

Q You don't recollect him ever saying that or threatening that?

A Not to sue the Fund.

MR. STRUMPF: I have no further questions at the present time.

These examinations are still open, pending the answers to certain questions which have not been furnished.

(Whereupon, at 12:45 P.M., the examinations were adjourned, as above set forth.)

Subscribed and sworn to before me

this _____ day of _____ 1973

1
2
3 I, MARIAN J. DuVAL, of 140 Nassau Street,
4 New York, New York, do hereby certify that
5 the within deposition, given by ALBERT D.
6 MATHESON, which was taken before me on January
7 16, 1973, at the offices of Ballon, Stoll &
8 Itzler, ESQS., 1450 Broadway, New York, New York,
9 was reported stenographically by me and reduced
10 to typewriting under my supervision, and I
11 certify that the said deposition is a true
12 record of the testimony given by the witness
13 therein.

14 I further certify that I am not an attorney
15 associated with, or an employee of, any attorney
16 for the parties in said action, and have no
17 interest whatsoever in the above, nor have I any
18 consanguinity or affinity to any of the parties
19 in this action.
20

21 Marian J. DuVal
22
23
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DEFENDANTS' EXHIBIT A (IN EVIDENCE) -- ORDER AUTHORIZING
RETENTION OF ATTORNEY WITH ATTACHED PETITION AND AFFIDAVIT

(These papers have been reproduced in the Joint
Appendix as Exhibit A to the Answer to the Amended
Complaint, at pages A-15 to A-21)

DEFENDANTS' EXHIBIT B (IN EVIDENCE) -- SCHEDULE B-4 WITH
REFERENCE TO PAYMENT BY MONTMARTRE, INC., TO PLAINTIFF.

Official Form.

THE BLUMBERG, INC., LAW FIRM PUBLISHING
EXCHANGE PLACE AT BROADWAY, NEW YORK

SCHEDULE B-4.

Property in reversion, remainder, or expectancy, including property held in trust for the debtor
or subject to any power or right to dispose of or to charge.

USA 316-478
(ED. 4-22-71)

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

B-2

FPI-81-9-24-75-502-4417

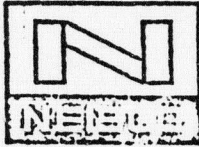
PARTICULAR DESCRIPTION		Estimated value of interest.
ONE		- 0 -
ONE		- 0 -
Property in money, stock, shares, bonds, annuities, etc.	NONE	- 0 -
Rights and powers, legacies and bequests.	NONE	- 0 -
	Total	- 0 -
PROPERTY HEREINFORF CONVEYED FOR BENEFIT OF CREDITORS. Portion of debtor's property conveyed by deed of assignment or otherwise, for the benefit of creditors; date of such deed; name and address of party to whom con- veyed; amount real- ized therefrom, and disposal of same, as far as known to debtor.	NONE	Amount realized as proceeds of property con- veyed. - 0 -
ATTORNEY'S FEES. Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.	Debtor has paid no sums to Ballon, Stoll & Shyman, at- torneys herein, for legal services rendered or to be ren- dered in these proceedings. All fees have been paid by Montmartre, Inc., by way of promissory notes	25,000 00
	Total	25,000 00

NEISCO, INC.

By: *[Signature]*
TREASURER

Petitioner

DEFENDANTS' EXHIBIT C (IN EVIDENCE) -- LETTER FROM NEISCO,
INC. TO BALLON, STOLL & SHYMAN DATED FEBRUARY 24, 1970



NEISCO, INCORPORATED

Manufacturers of Yarns and Fabrics

529 FIFTH AVENUE • NEW YORK, N. Y. 10017 • TEL. (212) TN 7-8760

NEW ADDRESS:
545 MADISON AVE.
NEW YORK, N. Y. 10022

February 24, 1970

Ballon, Stoll & Shyman
1450 Broadway
New York, N. Y. 10018

Gentlemen:

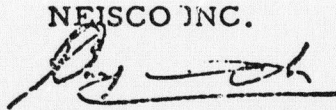
In accordance with a regular audit being conducted of our books as of November 24, 1969, will you please confirm to our Auditors, Messrs. Wasserman & Taten, Certified Public Accountants, 501 Fifth Avenue, New York, New York 10017, the following information as of that date:

1. Liability to you for services rendered.
2. Accounts receivable and other receivables placed in your hands for collection and the status of each account.
3. Litigation affecting us either as a plaintiff or defendant and monetary damage involved.
4. Any other contingent liability or asset of which you have knowledge.
5. Have you researched filing under the Uniform Commercial Code in order to ascertain the absence of any such liens? If any were disclosed, please list them below.

Your prompt cooperation will be appreciated.

Respectfully,

NEISCO INC.



Peter M. Lynch

DEFENDANTS' EXHIBIT D (IN EVIDENCE) -- DRAFT AGREEMENT
FOR EMPLOYMENT OF ERNEST HORVATH BY NEISCO, INC.

AGREEMENT made this day of July, 1970 by and between
NEISCO, INC. (hereinafter referred to as "Neisco"), ERNEST V.
HORVATH (hereinafter referred to as "Horvath") and THE CENTRAL
STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND (hereinafter
referred to as "the Fund").

W I T N E S S E T H :

WHEREAS, Neisco filed a Petition for an Arrangement pur-
suant to and under Chapter XI of the Bankruptcy Act, as amended,
in the United States District Court for the Southern District of
New York on November 24, 1969 and said petition is still pending
before the Honorable Roy Babitt, Referee in Bankruptcy; and

WHEREAS, Horvath is presently serving as President of
Neisco, ninety (90%) percent of the issued and outstanding stock
of which is about to be acquired by the Fund; and

WHEREAS, Neisco and the Fund desires to be assured of
Horvath's continued service as a consultant in the management
and direction of Neisco, Inc. and its business; and

WHEREAS, Horvath is willing to render such services to
Neisco, Inc. upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL
COVENANTS HEREINAFTER CONTAINED AND OTHER VALU-
ABLE CONSIDERATION, IT IS HEREBY MUTUALLY COVE-
NANTED AND AGREED BY THE RESPECTIVE PARTIES
HERETO, AS FOLLOWS:

FIRST: Subject to the provisions hereinafter set forth,

the terms of this consultative agreement shall commence on the day on which the Referee in Bankruptcy of the United States District Court for the Southern District of New York makes and enters an order confirming the Arrangement of Neisco, Inc. filed in the Proceedings for an Arrangement of said company presently pending in the United States District Court for the Southern District of New York and shall terminate upon the death of Horvath.

SECOND: Neisco hereby retains Horvath to perform and he agrees to perform during the term of this consultative agreement, as may from time to time be necessary, subject to the following conditions.

A. Horvath shall devote only so much of his time or his attention to the affairs of Neisco as Horvath may personally deem necessary. Horvath's judgment with regard thereto shall be conclusively binding on all of the parties hereto.

B. During the term of this consultative agreement, Neisco shall pay to Horvath and he shall accept from Neisco, in full for his consultative services, the sum of \$36,000 per annum, payable in equal semi-monthly installments.

THIRD: Upon the termination of this consultative agreement by virtue of the death of Horvath, Neisco shall pay to Horvath's widow, the sum of \$18,000 per year for a period of six (6) years from the date of his decease, payable in equal semi-monthly installments.

FOURTH: The Fund will place with a person acceptable to all parties hereto, a Letter of Credit from a financial institution acceptable to all parties in the amount of \$200,000, which Letter of Credit shall serve as security for the faithful performance of the provisions of this agreement by Neisco. In the event Neisco shall fail to faithfully perform the provisions of this agreement on his part to be performed, the said \$200,000 Letter of Credit shall immediately become the property of Horvath or his widow; as the case may be, and Horvath or his widow may draw upon the same to the full extent of \$200,000 as Horvath or his widow may see fit.

FIFTH: If Neisco shall faithfully perform all of the obligations imposed upon him by the provisions of this agreement, six (6) years after Horvath's decease, said Letter of Credit shall be returned to the Fund and cancelled.

SIXTH: Horvath shall be entitled to avail himself of any and all fringe benefits offered by Neisco to its employees to the same extent that Horvath would have been committed to so avail himself had he been a full-time employee of the Company with a salary of at least \$36,000 per annum.

SEVENTH: Anything to the contrary herein notwithstanding it is understood that any and all services provided hereunder by Horvath shall be as an independent contractor and not as an employee of the Company.

EIGHTH: If Neisco shall at any time be merged or consolidated into or with any other corporation or substantially all of the assets of the Company shall be transferred to another corporation, the provisions of this agreement shall be binding upon and inure to the benefit of the corporation resulting from such merger or consolidation or to which such assets shall be transferred and this provision shall be a continuing one applying in the event of any subsequent merger, consolidation or transfer of assets.

NINTH: Horvath has been induced to enter into this consultation agreement by the representation of Neisco and the Fund that the Fund shall rewrite and reconstitute Neisco's indebtedness to the Fund and the mortgages securing the same so that the said mortgages will be thirty year mortgages from the date of said rewriting and reconstituting, and further that there shall be a moratorium on payments of interest and amortization on said mortgages for a period of three years. This agreement shall not become effective until Neisco and the Fund have exhibited to Horvath proof satisfactory to Horvath that said rewriting and reconstituting of said indebtedness and mortgages has been accomplished.

TENTH: Horvath shall be permitted to reside wherever he may deem appropriate and the place of his residence shall not affect the obligations of Neisco and the Fund hereunder.

ELEVENTH: The rights and benefits of Horvath under this agreement are personal to him and shall not be subject to volun-

tary or involuntary alienation, assignment or transfer except as otherwise provided herein.

TWELFTH: Any waiver, alteration or modification of any of the provisions of this agreement or cancellation or replacement of this agreement shall not be valid unless in writing and signed by the parties hereto.

THIRTEENTH: If any provision of this agreement shall contravene or be invalid under the laws of the United States or any state and it is agreed that such contravention or invalidity shall not invalidate the whole agreement, but shall be construed as if not containing the particular provision or provisions held to be invalid.

FOURTEENTH: The provisions of this agreement shall be construed under and pursuant to the laws of the State of New York and those laws shall be applicable to any controversy surrounding this agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day, year and month first above written.

NEISCO, INC.

By: _____

Ernest V. Horvath

THE CENTRAL STATES SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND

By: _____

DEFENDANTS' EXHIBIT E (IN EVIDENCE) -- DRAFT GUARANTEE OF
PAYMENT BY CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS
PENSION FUND TO ERNEST HORVATH.

GUARANTEE

Guarantee given this day of , 1971,
by the Trustees of the Central States, Southeast and South-
west Areas Pension Fund (hereinafter called "Guarantor")
to Ernest V. Horvath (hereinafter called "Horvath").

In order to induce Horvath to enter into a Consulting
Agreement with Neisco, Inc., on terms substantially identical
to the terms embodied in Exhibit A annexed (the "Agreement"),
the Guarantor agrees as follows:

1. The Guarantor hereby guarantees collection by
Horvath of all consultant fees due under the Agreement.

2. The Guarantee shall remain in effect regardless
of the solvency or insolvency of Neisco, Inc., and despite the
extension or modification of the obligations of Neisco, Inc.,
under the Agreement or by operation of law, or the subsequent
reorganization, merger, or consolidation of Neisco, Inc., or
any other change in the composition, nature, personnel, or
location of Neisco, Inc.

3. This Guarantee shall continue until all of the
payments required under the Agreement have been made by Neisco,
Inc., however, the limitation of Guarantor's aggregate liability
under this Guarantee shall be \$125,000.

4. This Guarantee shall be binding upon the Guarantor and its successors. It shall inure to the benefit of Horvath, alone, and shall not be assignable by Horvath voluntarily or by operation of law. Any attempted assignment by Horvath of his rights under this Guarantee shall be void.

IN WITNESS WHEREOF, the Guarantor has signed this Guarantee.

CENTRAL STATES SOUTHEAST AND SOUTHWEST
AREAS PENSION FUND,

By: _____
Executive Secretary

DEFENDANTS' EXHIBIT F (IN EVIDENCE) -- DEFENDANTS' ANSWERS
TO PLAINTIFF'S INTERROGATORIES AND ATTACHED EXHIBITS

(These papers have been reproduced in the Joint
Appendix at pages A-46 to A-132)

DEFENDANTS' EXHIBIT G (IN EVIDENCE) -- LETTER FROM RADOM TO
BALLON, RE: NEISCO, INC., DATED FEBRUARY 18, 1970.

LAW OFFICES OF
JOSEPH S. RADOM

1043 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226

February 18, 1970

013 963-7187

Frederick E. M. Ballon, Attorney
Ballon, Stoll & Shyman
1450 Broadway
New York, New York 10018

Re: Neisco, Inc.
Re: Montmartre, Inc.
Re: Masmo

Dear Fred:

(Ca Fund Trustee)
Mr. Albert Matheson has authorized the person who countersigns check on the Montmartre account to pay all the notes (in the aggregate amount of \$25,000) held by Wasserman & Tatem. Therefore, as and when sufficient funds become available from the operations of the Hotel, periodic payments will be made. Similar authority has been given to pay the notes held by Messrs. Snary and Dufour providing, however, that full details are submitted to us respecting the advances made by the payees of these notes.

I am in accord with your observation that the premiums previously paid by the Pension Fund on the policies insuring the lives of Messrs. Horvath should not be charged to Neisco. Mr. Rugendorf has been notified accordingly and doubtless he will attend to the necessary adjustment immediately. In the meantime, I note from Irwin's letter of February 11th that he has not received the forms of assignment from the Horvaths, and I would suggest that they comply with his request without delay. If there is any reason as to why they are withholding these assignments, please advise me by phone.

I know of no means by which the Pension Fund can sanction payment of fees to your offices, as suggested in your February 3rd letter.

The firm of Bradley, Gebhardt, DeLaney and Millette, of Charlotte, N.C., has been retained to represent the Pension Fund Trustees to initiate foreclosure proceedings of the Masmo real and personal property covered by the mortgages and security interests held by the Pension Fund Trustees. Mr. Bradley of the Carolina firm is preparing the requisite notices and other documents relating to the adoption of the foreclosure action, and as soon as these are received we can attempt to establish a time table as to the filing of the other petitions.

I shall be in your offices on the morning of February 24th for the purpose of meeting with Ron Itzler so as to complete preparation for the hearing scheduled later that morning.

Cordially,

JOSEPH S. RADOM

jsr/wbs
cc: Mr. Teitlebaum

DEFENDANTS' EXHIBIT I (FOR IDENT.) -- HANDWRITTEN RECORD
OF SERVICES RE: NEISCO, INC., BY BALLON, STOLL & ITZLER

(Reproduction of the entire Defendants' Exhibit I
has been dispensed with by stipulation between the
parties, but will be made available to the Court.)

DEFENDANTS' EXHIBIT I-1 (FOR IDENT.) -- HANDWRITTEN RECORD
 OF SERVICES RE: NEISCO, INC., BY BALLON, STOLL & ITZLER
 DATED DECEMBER 5, 1969.

By I. I. M.

FB

Neisco
 (Neisco)

12/4/69 Calls to, from

House Counsel

Calls from
 client

Write letter
 to client

Calls to, from
 attorney for credit

E-247

DEFENDANTS' EXHIBIT I-2 (FOR IDENT.) -- HANDWRITTEN RECORD
OF SERVICES RE: NEISCO, INC., BY BALLON, STOLL & ITZLER
DATED FEBRUARY 24, 1970.

By T. 2. 1

PS I

Notes

2/24/70

Mtg with client & Joe
Radom

1/1/70

cc. sig - AFM

1/1/70

filed January Audit Report ©

Made a ck to Ct. Reporter

©

DEFENDANTS' EXHIBIT J (FOR IDENT.) -- TRANSCRIPT OF BANKRUPTCY
PROCEEDINGS BEFORE HON. ROY BABBITT, ON FEBRUARY 1, 1972.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN BANKRUPTCY

- - - - - X

IN THE MATTER :

of :

NEISCO INC., : 69 B 769

Debtor. :

- - - - - X

United States Court House
Foley Square
New York, New York

February 1, 1972
10:30 o'clock a.m.

ADJOURNED FIRST MEETING; ADJOURNED XI-4;
ADJOURNED CONFIRMATION; ADJOURNED OBJECTIONS
TO CLAIMS; ADJOURNED MOTION ON OBJECTION TO
CLAIMS; ADJOURNED COMPLIANCE 321

B E F O R E :

HON. ROY BABBITT,

Referee in Bankruptcy

BARRY W. RAYVID
OFFICIAL COURT REPORTER
U.S. COURTHOUSE (R.230)
FOLEY SQUARE, N.Y. 10007

A P P E A R A N C E S :

BALLON, STOLL & ITZLER, ESQS.
Attorneys for the Debtor
1457 Broadway
New York, New York

BY: RONALD ITZLER, ESQ., Of Counsel

JOSEPH RADOM, ESQ.
Attorney for the Pension Fund

SCHAEFFER, DALE, VOGEL & TAVROW, ESQS.
Attorneys for the Pension Fund
1501 Broadway
New York, New York

BY: LAWRENCE VOGEL, ESQ., Of Counsel

LEINWAND, MARON, HENDLER & KRAUSE, ESQS.
Attorneys for the Creditors Committee
10 East 40th Street
New York, New York

BY: FREDERIC WEINBERG, ESQ., Of Counsel

HON. WHITNEY NORTH SEYMOUR, JR., ESQ.
United States Attorney
United States Court House
Foley Square
New York, New York

BY: SUSAN FREIMAN, Of Counsel
-and-
RICHARD TODA, ESQ., Of Counsel

- - - - -

P R O C E E D I N G S

1
2
3
4 MR. ITZLER: Your Honor, I have
5 brought with me the consents to file with
6 the court.

7 The creditors committee counsel has
8 advised me that the conditions with regard
9 to the filing of the consents still stands,
10 that if the Pension Fund cannot put up the
11 ten thousand dollars now, the creditors
12 committee would accept - -

13 MR. WINEBERG: The condition, I
14 think, has been modified since it was origin-
15 ally stipulated to on the record. We have
16 the stipulation of the Fund on record that
17 they will put up the amount of money. We
18 don't need the physical placing of money with
19 anybody if they agree.

20 THE REFEREE: What, for some reason,
21 if we did not confirm?

22 MR. WEINBERG: The money would be
23 forfeited. I don't think they have changed
24 their position. If the main reason for fail-
25 ure to confirm is directly attributable to-

1 wards the Fund - -

2 MR. RADOM: That was the understand-
3 ing.

4 THE REFEREE: In other words, the
5 commitment is there, Mr. Radom?

6 MR. VOGEL: Your Honor, I understand
7 that. I have not been close to the situation
8 having been out of the country for the last
9 week. I understand there is a difference of
10 opinion among the parties at this point.

11 I didn't want it thought that under
12 these circumstances if there is no confirmation
13 now that the Fund would forfeit that ten
14 thousand dollars, and I don't want it then to
15 become a question as to whose fault it was
16 that there is no meeting of the minds. I
17 understand there is no meeting of the minds
18 and I think the Court ought make inquiry into
19 that.

20 THE REFEREE: In what area is there
21 no meeting?

22 MR. VOGEL: I don't know.

23 THE REFEREE: Does that relate to the
24 contents of the letter I received from Mr.
25

1 Horvath January 21st? Is anyone going to
2 tell me? Do you know what Mr. Vogel refers
3 to?

4 MR. ITZLER: Yes, I do.

5 THE REFEREE: What is it? Are you
6 going to be accurate now?

7 MR. ITZLER: No, I can't be, and I
8 can only repeat what I've been told as late
9 as this morning.

10 I believe there is a dispute between
11 Ernest Horvath and the Pension Fund with re-
12 gard to certain clause with regard to
13 indemnification in his agreement. Is that
14 correctly stated?

15 THE REFEREE: You mean the guarantee?

16 MR. ITZLER: That is correct.

17 THE REFEREE: Not the consultation?

18 MR. ITZLER: That's correct.

19 THE REFEREE: Apparently Mr. Horvath
20 has sent to me three drafts of a guarantee,
21 the first drawn by Mr. Polish and the second
22 and third both drawn by Mr. Vogel.

23 Mr. Vogel, apparently, cause 3 is the
24 paragraph that seems to both George Horvath
25

1
2 even if it doesn't bother his brother. In
3 the first agreement drawn by Mr. Polish, the
4 guarantee of the Pension Fund to Ernest
5 Horvath is to continue until all of the pay-
6 ments under the consultation contract have
7 been made by Neisco. However, the limitation
8 of the guarantor liability is one hundred
9 twenty-five thousand dollars?

10 MR. HORVATH: Yes.

11 THE REFEREE: Apparently the identical
12 language is in the second document. Then,
13 there is a third agreement, apparently drawn
14 by Mr. Vogel, that the guarantee continues
15 until Neisco has paid Horvath one hundred
16 twenty-five thousand dollars and that the
17 guarantor has no further obligation to
18 Horvath. What is really the difference? I
19 don't see any difference in the consulting
20 agreement, Mr. Horvath, as I have read that?
21 This is between Ernest and Neisco.

22 MR. HORVATH: Right, sir.

23 THE REFEREE: The guarantee is between
24 Ernest and the Fund.

25 MR. HORVATH: That is correct.

1
2 THE REFEREE: The Fund is guaranteeing
3 one hundred twenty-five thousand dollars and
4 no more.

5 MR. HORVATH: That was not what we
6 had agreed to here in court.

7 THE REFEREE: Mr. Polish's draft seems
8 to say the same thing. Mr. Polish stated his
9 draft that the guarantee continues until all
10 of the payments have been made by Neisco but
11 the limitation is one hundred twenty-five
12 thousand dollars.

13 MR. HORVATH: Right. The first draft
14 that Mr. Polish drafted and Mr. Vogel's draft
15 are in accord.

16 THE REFEREE: I am now reading from
17 the last one, and the last one says that the
18 guarantee continued until Neisco pays one
19 hundred twenty-five thousand dollars and
20 thereafter Neisco has no further obligation.
21 Your point is that if Neisco should default
22 after the hundred twenty-five thousand dollars
23 Ernest Horvath could not look to the guarantee?

24 MR. HORVATH: That is right.

25 THE REFEREE: In other words, the

1 guarantee is only for the first one hundred
2 twenty-five thousand dollars and if it comes
3 from Neisco, the Fund is out?

4 MR. RADOM: Further discussion,
5 though, with Mr. Polish, resulted in a modi-
6 fication of that.

7 THE REFEREE: Another one?

8 MR. RADOM: Yes.

9 THE REFEREE: Which I don't have.

10 MR. HORVATH: Because it was never
11 agreed to.

12 THE REFEREE: You know, I am really
13 very tired of fighting this application of
14 a debtor company for Ernest Horvath's future.
15 I don't mind telling you, Mr. Itzler and Mr.
16 Horvath, I am not going to keep this case
17 alive in order to make for your brother's
18 future.

19 I am here to revive this company, and
20 if I can't revive him, he goes under. I
21 cannot worry about Ernest Horvath.

22 MR. HORVATH: I understand that.

23 THE REFEREE: I am not going to get
24 involved in negotiating a guarantee between
25

1 your brother and the Fund as a price for
2 keeping this company alive. The price is too
3 high.
4

5 MR.HORVATH: I didn't initiate this.

6 It was done two months ago and the compromise
7 was constructed, which we tried to live up
8 to. That's why I sent you the information,
9 because I did not want to come here and be
10 charged that I didn't.

11 THE REFEREE: This is about the same
12 - - you will guarantee the first six years
13 if Neisco doesn't pay?

14 MR. RADOM: That's right, not to
15 exceed one hundred twenty-five thousand
16 dollars.

17 THE REFEREE: I have had it up to here.

18 MR. ITZLER: Your Honor - -

19 THE REFEREE: Look, Mr. Itzler, I have
20 already commented a few times this morning - -
21 don't let me comment about the roll you played.

22 MR. ITZLER: I am trying to do a job
23 representing a company. I am not interested
24 in Ernest or George Horvath, or the Fund.

25 THE REFEREE: I told you the last time

1
2 we are placing too much emphasis on Ernest
3 Horvath's future. That doesn't concern me,
4 not a bit.

5 MR. ITZLER: I represent Neisco. If
6 I am paid, I will be paid by Neisco.

7 THE REFEREE: If Mr. George Horvath
8 doesn't see what the net result of a breakdown
9 in negotiations between his brother and the
10 Fund is, I very well see it. I have reached
11 the point where it serves no purpose now to
12 continue this application. There is utterly
13 no reason now for me to continue this case
14 while the only one who really benefits is
15 Ernest Horvath. I think that's the posture
16 of this matter as far as I am concerned.

17 MR. HORVATH: Ernest Horvath worked
18 every day and tried to run it.

19 THE REFEREE: Has the Fund said its
20 last word in this thing, Mr. Radom? It seems
21 to me every time when we come to something - -

22 MR. RADOM: We have made concession
23 after concession. We told Mr. Polish as late
24 as this morning if the documents presented
25 by Mr. Vogel are not satisfactory, we are going

1 to seek an adjudication and have the collat-
2 eral, if at all possible, surrendered to us.
3 We want these mills operating.
4

5 MISS FREIMAN: Can I make a sugges-
6 tion, Your Honor? I suggest that we adjourn
7 this until half-past one and, perhaps, George
8 can call Ernest and find out whether Mr.
9 Ernest Horvath is really concerned to the
10 point that he is willing to lose everything.
11 The difference between a quarter of a million
12 dollars and nothing might be such to Mr.
13 Ernest Horvath that he would rather take the
14 guarantee of one hundred twenty-five thousand
15 dollars.
16

17 THE REFEREE: How old is Ernest
18 Horvath?
19

20 MR. HORVATH: Sixty-nine. How long
21 he lives is not a matter of contention.
22

23 MR. RADOM: Two weeks ago when I was
24 last here, in the event Ernest Horvath dies,
25 he wanted protection for his widow. There-
after, the agreement was again modified to
give him additional protection. Now, I must
reiterate what I said before, we are making

1
2 no further concessions. If they don't accept
3 the documents as presented, this is it.

4 MR. HORVATH: Mr. Radom always
5 chooses to pick his own side. I sent Your
6 Honor the true status.

7 THE REFEREE: I saw those. I could
8 make comment on the changes but I am not here
9 to negotiate a deal.

10 MR. HORVATH: I understand, I am not
11 asking you to. I simply wanted to be sure
12 that everybody understood that we lived up
13 to the agreement as made last time and any
14 modification like he is asking for his wife
15 to be included, was in light of their modifi-
16 cation to cut it to six years, which he was
17 willing to accept if that included his wife
18 for half salary.

19 But, that was only done to accommodate
20 a new idea that they came back with. It seems
21 that counsel for the Fund made certain agree-
22 ments but the trustees think that they are
23 the Lord's representatives and they can simply
24 change whatever it said here and have it come
25 back differently.

1
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16 cation to cut it to six years, which he was
17 willing to accept if that included his wife
18 for half salary.

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20 a new idea that they came back with. It seems
21 that counsel for the Fund made certain agree-
22 ments but the trustees think that they are
23 the Lord's representatives and they can simply
24 change whatever it said here and have it come
25 back differently.

1 distribution, our order of confirmation. We
2 have with us our consents and as soon as the
3 Pension Fund indicates to the attorney for the
4 creditors committee that it would promise the
5 payment of the ten thousand dollars, we can
6 file the consents and confirm this within five
7 days.

8 THE REFEREE: Except?

9 MR. ITZLER: I don't know that the
10 Pension Fund is prepared to make that commit-
11 ment to the attorney for the creditors
12 committee.

13 THE REFEREE: Ten thousand dollars?

14 MR. ITZLER: Well, it really is a
15 commitment to fund the Chapter 11 proceeding.

16 THE REFEREE: I had understood that
17 what went on before the break had nothing to
18 do with that at all.

19 MR. ITZLER: Well, Your Honor, I
20 represent the company. I have no knowledge
21 at all as to what transpired.

22 THE REFEREE: Are we ready to confirm
23 this arrangement quite apart from Ernest
24 Horvath?
25

1
2 MR. ITZLER: I do not have the money
3 to confirm.

4 THE REFEREE: How do I get the money?

5 MR. ITZLER: The only way is if the
6 Pension Fund agrees to turn it over to Neisco
7 to fund the Chapter 11.

8 THE REFEREE: What are the conditions
9 of that?

10 MR. ITZLER: I understand that an
11 agreement must be entered into between the
12 Pension Fund and Ernest Horvath with regard
13 to his employment. I do not know that to be
14 a fact; I understand that to be a fact.

15 THE REFEREE: Mr. Radom, maybe you
16 know things that are facts.

17 MR. RADOM: Your Honor may recall that
18 the Pension Fund was restrained in an action
19 in Chicago by George Horvath and as a condi-
20 tion of having that case dismissed we agreed
21 to enter into an employment contract with
22 Ernest Horvath which we are still prepared
23 to carry through.

24 We have the documents here; counsel
25 for Mr. Horvath has had a chance to examine

1 the documents at the lunch hour. I might
2 ask them if they are prepared to speak on
3 behalf of Mr. Ernest Horvath as to whether
4 these are in satisfactory form to be signed.

5 THE REFEREE: Let the record show,
6 first of all, that during all of this dis-
7 cussion and the preceding hearing Mr. Ernest
8 Horvath has not been here and, at least, I
9 have not heard from any attorney representing
10 him.

11 MR. ITZLER: I believe Mr. Citron
12 has been representing Mr. Horvath but he is
13 ill today.

14 THE REFEREE: One thing seems perfect-
15 ly clear to me. We cannot put through an
16 arrangement unless an agreement is satisfac-
17 torily entered into for Ernest's future,
18 part of a condition for which will be a
19 termination of the lawsuit brought in Chicago,
20 is that correct?

21 MR. ITZLER: That is correct.

22 THE REFEREE: Then, the big item is
23 Ernest Horvath?

24 MR. ITZLER: That is correct.
25

1 THE REFEREE: Mr. Polish, have you
2 examined the documents that Mr. Radom just
3 made reference to?

4 MR. POLISH: Yes. I don't know
5 whether it is in conformity with what we under-
6 stand the agreement into several weeks ago
7 contained.

8 THE REFEREE: In what respect?

9 MR. POLISH: The guarantee.

10 THE REFEREE: You mean the guarantee
11 to mean they will guarantee up to one hundred
12 twenty-five thousand dollars at any point?

13 MR. POLISH: Yes, sir.

14 THE REFEREE: And they take the posi-
15 tion that the first hundred twenty-five thous-
16 and dollars is guaranteed; if it comes from
17 Neisco they are off the hook?

18 MR. POLISH: Yes, sir.

19 THE REFEREE: What am I supposed to
20 do?

21 MR. POLISH: I don't know. I have
22 been in the middle of this proceeding in a
23 unique capacity since it began. I have done
24 work for all sides; I have been a currier for
25

1 all sides.

2 THE REFEREE: Should I speak to
3 George Horvath?

4 MR. POLISH: Yes, sir.

5 THE REFEREE: Where does it leaves us,
6 Mr. Horvath?

7 MR. HORVATH: I don't know.

8 THE REFEREE: Does that agreement
9 given you to read this afternoon satisfy you
10 on your brother's behalf?

11 MR. HORVATH: No, sir.

12 THE REFEREE: Is the Pension Fund
13 prepared to make any change in it?

14 MR. RADOM: No, sir.

15 THE REFEREE: I don't have any basis
16 for continuing negotiations so long as you
17 have represented, Mr. Itzler, that a condition
18 of confirmation here is satisfying Ernest
19 Horvath, and apparently the parties can't
20 come to an agreement what he will get, via his
21 brother. I have no alternative. I think
22 that's very short-sighted on your brother's
23 part and yours.

24 MR. HORVATH: I think that Your Honor
25

1 wouldn't want me to go into all the ramifica-
2 tions of this point.

3 THE REFEREE: You wouldn't want me to
4 go into a few.

5 MR. ITZLER: Your Honor, I have been
6 successful on one or two occasions before to
7 bring the parties closer together merely as
8 an intermediary.

9 THE REFEREE: You have fifteen minutes
10 to do it right now. This application will not
11 go past today unless I am sure I am going to
12 confirm.

13 MR. ITZLER: I need to speak with both
14 sides.

15 THE REFEREE: Speak with George Horvath
16 since he has been picking up his brother's
17 chestnuts.

18 MR. ITZLER: I utilized the lunch
19 hour.

20 THE REFEREE: Just the next fifteen
21 minutes or as long as it takes me to wind up
22 Masmo. This case is going to end either in
23 confirmation, because you have told me you
24 have done everything you can, or it's going
25

1 to be adjudicated.

2 The only way it can be confirmed is
3 if the Pension Fund and Mr. Horvath come to
4 terms. So, as Mr. Radom assures me, he speaks
5 for the trustee and they are through negotiat-
6 ing, and as long as Mr. Horvath assures me he
7 speaks for his brother and he won't renege,
8 you have until I finish Masmo.

9 MR. HORVATH: The agreement I am talk-
10 ing about was arrived at in this court.

11 THE REFEREE: They have changed their
12 minds. Without the Fund, I cannot make a move;
13 I cannot do any more than I have done. They
14 changed their minds. I couldn't care less.

15 I need that agreement to put through
16 an arrangement. My roll in life is to re-
17 arrange companies or adjudicate them, that's
18 all. I am not here to insure your brother's
19 future or your sister-in-law's. That's it,
20 you have the next fifteen minutes or until I
21 finish with Masmo.

22 MR. ITZLER: I think Mr. Horvath
23 wanted to be present for the Masmo hearing.

24 THE REFEREE: Let me see where I am
25

1 as far as Masmo. As of today, Neisco travels
2 the road to liquidation or confirmation. I
3 am finished getting involved in Ernest
4 Horvath's future, frankly.

5 MR. HORVATH: That's not really the
6 only issue.

7 THE REFEREE: To me, that's the
8 only issue that blocks my roll in life. I
9 have one roll, either this company emerges
10 alive or is liquidated. That's my only roll.

11
12 (At this time a short recess was
13 taken.)

14
15 MR. ITZLER: Judge, we have agreed.
16 We have to get Ernest Horvath here so that
17 the documents can be signed right here and
18 now, today.

19 THE REFEREE: I have no concern with
20 that. I will give you the time if it takes
21 until ten o'clock tonight. I want to know
22 whether or not in principal it has been agreed
23 between the Fund and Mr. Horvath as to what
24 the terms of the consultation agreement between
25

1 Neisco, Inc. and the guarantee are to be?

2 George Horvath, can we expect your
3 brother sometime?
4

5 MR. HORVATH: He is taking a taxi
6 down here.

7 MR. VOGEL: Your Honor, we would just
8 like to put on the record the outline of the
9 agreement so that all parties will understand
10 what it is. This happened once before.

11 THE REFEREE: I don't see what putting
12 it on the record is going to prove. They are
13 going to read it and execute it right now.

14 MR. VOGEL: Your Honor, I understand
15 there may be some difficulty which is why I
16 am putting it on the record.

17 THE REFEREE: How will putting it on
18 the record get Ernest Horvath to sign?

19 MR. VOGEL: It has nothing to do with
20 Ernest.

21 THE REFEREE: Tell me?

22 MR. VOGEL: It is our understanding
23 that - -

24 THE REFEREE: Whose?

25 MR. VOGEL: The Fund's understanding

1 that the following plan would take place
2 once an agreement between Ernest Horvath,
3 for consultation, would be entered into be-
4 tween Neisco and Ernest Horvath, and that the
5 Fund would guarantee the sum - - and the
6 duration has been agreed to.

7 Thirdly, it is my understanding and
8 the Fund's understanding from the beginning
9 that George and Ernest and any other officers
10 and directors - -

11 THE REFEREE: George is no longer an
12 officer of Neisco.

13 MR. VOGEL: Any officers of Neisco
14 that exist would resign and give us their
15 resignations at the confirmation.

16 THE REFEREE: I take it all of this
17 speaks of confirmation?

18 MR. RADOM: There is no purpose of
19 moving ahead until we have the deposit in
20 escrow.

21 MR. VOGEL: All these things, it was
22 understood, would be physically available to
23 be deposited in escrow.

24 Fourthly, that the officers, a
25

1 directors and stockholders of the parent of
2 Neisco would effect such corporate resolution
3 and act to effect the transfer of the shares
4 of Nesico to the Fund or its designee.

5 THE REFEREE: The shares of Neisco?

6 MR. HORVATH: We don't do that.

7 THE REFEREE: Then we don't have an
8 agreement.

9 MR. HORVATH: That's just been
10 developed on me, just this minute.

11 MR. VOGEL: Points to that effect
12 were delivered a year ago.

13 THE REFEREE: I want Ernest here by
14 the time I get back, at four o'clock. Either
15 everything is going to be ironed out or
16 you're all going to be flattened. Is that
17 clear?

18 I don't care what you work out. As
19 far as I am concerned, you can give them
20 the Verrazano Bridge.

21 By four o'clock there is going to be
22 a meeting of the minds, that's it. I don't
23 care how much blood is shed so long as it is
24 shed outside. I don't want to hear any more
25

1
2 new or old wrinkles. All wrinkles are ironed
3 out today.

4
5 (At this time a short recess was
6 held.)

7
8 THE REFEREE: Let the record show
9 that Ernest Horvath who has been the subject
10 of so much discussion is present.

11 What have we done? I want as much
12 on the record as possible, at this time.

13 MR. ITZLER: May I interrupt? Could
14 we have the courtroom private?

15 THE REFEREE: Who do you not want
16 here?

17 MR. ITZLER: The press, in particular.
18 If you don't mind, I don't think that the
19 nature of the private agreement among the
20 parties here should necessarily be disclosed
21 to the public.

22 THE REFEREE: I don't like to exclude
23 the press. I could ask this gentleman if he
24 would mind participating in all other aspects.

25 MR. ITZLER: I will be glad to speak

1
2 to him outside and answer him.

3 A VOICE: I am not interested in the
4 details of the agreement.

5 THE REFEREE: Would you mind waiting
6 outside until I hear them and then I will
7 call you back?

8 MR. ITLZER: I will be very glad to
9 tell you after.

10 MR. VOGEL: Your Honor, I got as high
11 as four points. There was one more, the
12 fifth point, which is the lawsuit brought in
13 Chicago with regard to the Fund's attempt to
14 vote the shares of Neisco held by Mount
15 Clemens Industries.

16 That suit, as you know, was stayed by
17 the local court and one of the conditions of
18 the settlement would be that that suit be
19 dropped by the Horvaths with prejudice.

20 THE REFEREE: Why don't you take the
21 point seriatum and let me get assessments
22 from everybody as they are recited?

23 MR. VOGEL: Yes, Your Honor.

24 THE REFEREE: Listen carefully,
25 gentlemen.

1 MR. VOGEL: When I speak, I speak
2 for the Pension Fund. In that regard, the
3 Pension Fund will enter into a consulting
4 agreement, will guarantee a consulting agree-
5 ment, that will be entered into between Neisco
6 and Ernest Horvath.

7 THE REFEREE: Have the terms of that
8 consulting agreement been worked out?

9 MR. VOGEL: The terms are physically
10 before me in a six-page document which I will
11 present to the court.

12 THE REFEREE: Mark it as Court's
13 Exhibit "1" in evidence.

14 (At this time the said document
15 was so marked in evidence.)

16 MR. VOGEL: There is only one change,
17 raising a number from six to seven.

18 THE REFEREE: Who will execute this
19 for Neisco?

20 MR. VOGEL: A designee of the Fund.

21 THE REFEREE: Is that agreeable, it
22 will be executed on behalf of the Neisco firm
23 by somebody designated by the Fund?

24 MR. HORVATH: Yes.

25 THE REFEREE: Ernest Horvath, have you

1 seen this?

2 MR. ERNEST HORVATH: Yes, sir.

3 THE REFEREE: You will execute this?

4 MR. ERNEST HORVATH: Yes.

5 THE REFEREE: So far as the Court is
6 now concerned, you are now a party to this
7 consultation agreement that the Court has
8 marked as Exhibit "1".

9 MR. ERNEST HORVATH: Yes.

10 MR. VOGEL: Secondly, the Fund will
11 guarantee Court's Exhibit "1" in the form of
12 a guarantee which I will hand to the reporter.

13 THE REFEREE: Mark that as Court's
14 Exhibit "2" in evidence.

15 (At this time the said document
16 was so marked in evidence.)

17 MR. VOGEL: Court's Exhibit "2", Your
18 Honor, has one inked change on it on page 1,
19 raising the number six to number seven. In
20 addition, paragraph four, thereof, contains
21 a paragraph which has become very important
22 in light of the proceeding that occurred in
23 the Masmo proceeding.

24 MR. ITZLER: We are not going to
25 interpret that. Whatever that agreement says,

1
2 it says.

3 THE REFEREE: Taking first things
4 first, first of all, in dealing with the first
5 paragraph which was the subject of Mr. George
6 Horvath's letter to me, "The guarantor hereby
7 guarantees the payment by Neisco to Ernest
8 Horvath of all consulting fees induced under
9 the agreement for the first seven years of its
10 duration provided that in no event shall the
11 guarantor be required to pay any amount exceed-
12 ing one hundred twenty-five thousand dollars
13 in the aggregate."

14 What is it you want me to look at?

15 MR. VOGEL: Paragraph four was put
16 into the guarantee to provide quiet enjoyment
17 of the properties that we are taking title to
18 pursuant to the settlement.

19 THE REFEREE: What is wrong with that?

20 MR. VOGEL: The problem is, as Your
21 Honor knows from being the judge in both Masmo
22 and Neisco, that certain of the property that
23 the Fund has a lien on, are the three mills
24 that today were bought by the group.

25 THE REFEREE: The Harrison group?

1

MR. VOGEL: In Florida.

2

3

THE REFEREE: Which is Horvath's son-in-law?

4

5

MR. VOGEL: Yes, Your Honor, and contemplated all along, of course, was that the Fund would be the successful bidder and there would be no problem.

6

7

8

9

THE REFEREE: It didn't work out?

10

11

12

13

14

MR. VOGEL: No, thereby bringing into clear focus the need to bring about the Fund's intended purpose to get quiet title when it brings foreclosure proceedings in North Carolina.

15

16

17

18

19

THE REFEREE: The difficulty as far as you are concerned is that Harrison is related through marriage. But, his company, in purchasing litigation that's going to be, is not going to be with the Horvaths.

20

21

22

23

24

25

MR. VOGEL: That is why we want it made clear we would consider it a breach of this agreement and would consider the guarantee null and void in the event that any objection were brought to our foreclosure against any of the properties of Neisco or Masmo upon which

1 the Fund has a lien today.

2 THE REFEREE: Supposing they are call-
3 ed as witnesses in a contest between Vacation
4 Worlds and - -

5 MR. VOGEL: Your Honor, the whole
6 point is we, today, view correctly or incor-
7 rectly Mr. Harrison as a person directly
8 related.

9 THE REFEREE: Supposing they are
10 subpoenaed as witnesses. Then there is a
11 direct participation.

12 MR. VOGEL: We would consider the
13 bringing of the action by the Harrison group
14 to be, itself, without the calling of them as
15 a witness, a breach of the guarantee.

16 THE REFEREE: That is not binding on
17 these people. If it's in there, it's in
18 there. I am not going to give you advisory
19 opinion on how it's construed.

20 MR. VOGEL: That is our understanding
21 of the paragraph.

22 THE REFEREE: Is there any assent
23 to this agreement by Ernest Horvath? Mr.
24 Ernest Horvath, have you read this guarantee?
25

1
2 MR. ERNEST HORVATH: Mr. Polish says
3 I have read it. I accept his word.

4 THE REFEREE: As far as I am concerned,
5 I am here to determine whether or not there
6 is a meeting of the minds between the Fund
7 as guarantor and Mr. Horvath to whose benefit
8 the guarantee runs. If they agree, I will let
9 another court worry about the contents of
10 paragraph four.

11 MR. VOGEL: We want to make it clear
12 that the meeting of the minds include that
13 agreement by them.

14 THE REFEREE: What do you want me to
15 do now, foreclose some judge from saying
16 parole evidence is admissible? I am only
17 here to mark that document in evidence so I
18 may keep it with me, less there be any change
19 of minds, and note there is assent to it.
20 I am not going to let you make a self-serving
21 statement as to what you think they mean.

22 MR. VOGEL: I am merely asking whether
23 or not there is meeting of the minds.

24 THE REFEREE: It speaks for itself.

25 MR. VOGEL: It does not. We are

1
2
3
4
telling you what our understanding is. Either
they will accept or we will have no meeting
of the minds.

5
6
7
8
9
10
THE REFEREE: I will tell you right
now I wouldn't sign that thing with the lan-
guage the way it was drafted. I would be
subpoenaed in as a witness adverse to the
Fund, and indirect and hostile participation.
I wouldn't sign it, if you are asking me.

11
12
13
14
15
16
If they want to sign it, let them
do as they please. That is not my function.
There is no point in making a record as to
what you think it means. That's what court
disputes are about, you each deciding and not
knowing what the other side meant.

17
18
19
I am not going to give you controversy
on something that is written. Do you want to
sign that, Mr. Ernest Horvath?

20
MR. ERNEST HORVATH: Yes.

21
THE REFEREE: As it's written?

22
MR. ERNEST HORVATH: Yes.

23
THE REFEREE: As you understand it?

24
MR. ERNEST HORVATH: Yes.

25
THE REFEREE: That's as far as my

1 inquiry goes. Who drafted that?
2

3 MR. POLISH: Mr. Vogel.

4 THE REFEREE: Fine. Let some judge
5 hold you against the person who drafted it.
6 Rewrite it.

7 MR. VOGEL: This was drafted before
8 today's proceedings in Masmo. There is a
9 changed state of facts.

10 THE REFEREE: Why don't you get up
11 an appropriate paragraph that will cover
12 what happened today, right now, before we
13 leave here today. This case is either dead
14 or alive.

15 You will now go into another room and
16 negotiate a contract as to what you under-
17 stand it embodied in language. I will not be
18 a part in a construction of what you people
19 mean.

20 MR. GEORGE HORVATH: Your Honor, may
21 I say a word?

22 THE REFEREE: No. I am not going to
23 hear a thing. You people will hammer out a
24 redraft or assent to the way it is. I am not
25 going to tell you now I will take parole

1 evidence without the guarantee being assented
2 to by Ernest Horvath. I don't have a case here.

3 Do you want to go into Referee
4 Loewenthal's chambers or courtroom?

5 MR. VOGEL: Your Honor, Mr. Polish has
6 communicated to me that what we have stated as
7 a sine quantum of our guarantee, to wit an
8 interpretation, would require a redrafting,
9 the sense of which redrafting would be that
10 any direct or indirect interference with the
11 operations or with the ownership by the Fund
12 or its designee of the property of Neisco or
13 the mills upon which the Fund has a lien,
14 would be of itself a breach of the guarantee
15 releasing the Fund of its obligations they are
16 under.

17 THE REFEREE: If that's what they want,
18 that's all right with me.

19 MR. VOGEL: This is what the Fund has
20 requested. Mr. Polish can respond.

21 MR. POLISH: May I ask that what Mr.
22 Vogel has stated be read back.

23 (At this time Mr. Vogel's last state-
24 ment was read back by the reporter.)
25

1 MR. POLISH: I submit, Your Honor,
2 I don't understand that language.

3 THE REFEREE: That's what lawsuits
4 are all about on contracts.

5 MR. POLISH: It seems to me that the
6 sense of whatever he is asking for - - I
7 think I understand what he is saying, although
8 he hasn't said it, is that if the Fund pro-
9 ceeds to foreclose upon the assets purchased
10 by Mr. Harrison's corporation today and Mr.
11 Harrison defends in any way against such fore-
12 closure they wish to avoid the guarantee.

13 MR. RADOM: You have said it very
14 well. Your Honor, it's the same thing when
15 the trustee in bankruptcy stood up today and
16 said I have examined these liens, they are
17 valid in all respects. Then to have Mr.
18 Polish reconfirm what I heard before that
19 we are being entrapped into litigation which
20 we want to escape - - we are trying to take
21 it out of court. We want to have peaceful
22 enjoyment of it. This is not - - if it
23 isn't acceptable to Mr. Polish and his
24 clients, I then say there is no understanding
25

1
2 whatsoever.

3 THE REFEREE: Look, I am not going
4 to draft an agreement for you people and I
5 am not going to construe this one. Now,
6 either this is assented to or rejected or
7 we are finished today.

8 At this stage of the game I hold the
9 last trump, not either of you.

10 What do you want to do? I am posed
11 to sit here if it takes all night, to para-
12 phrase General Grant. Now do it.

13 MR. POLISH: Your Honor, we arrived
14 at this language. I would live with that
15 language.

16 MR. VOGEL: It is not satisfactory.

17 THE REFEREE: What?

18 MR. VOGEL: Your Honor, I explained
19 but I would be willing to explain again.

20 THE REFEREE: Let me see if I made
21 myself clear. I am not now going to give you
22 an opinion as to how a dispute on certain
23 facts would come out in that language or tell
24 you how I would construe it against you as
25 the draftsman, or that parole evidence is

1
2 admissible.

3 If this agreement is not acceptable
4 to either side as drawn, the ballgame is
5 over. I don't care what you draft. I require
6 assent from you and Horvath.

7 MR. VOGEL: You do not have it.

8 THE REFEREE: That's that. Do you
9 wish to see about drafting a satisfactory
10 paragraph? I will stay with you all night
11 but today is the end of the road.

12 What do you want me to do?

13 MR. VOGEL: Your Honor, we have
14 greatly accepted your offer to stay while
15 we redraft.

16 THE REFEREE: Do you want this court-
17 room?

18 MR. VOGEL: I thought Mr. Polish said
19 there would be nothing to be gained by a
20 redrafting?

21 THE REFEREE: And you have not agreed
22 to this draft?

23 MR. VOGEL: That's right.

24 THE REFEREE: This is just spinning
25 wheels. If you think I am going to get

1 involved, you have another guess coming.

2 I take it, Mr. Radom, the sense of this is
3 if we have not come to an agreement with
4 Ernest Horvath one way or the other, this
5 case can be confirmed?
6

7 MR. RADOM: That's right.

8 THE REFEREE: Do I understand that
9 this paragraph in the guarantee will not be
10 assented to?

11 MR. POLISH: Mr. Vogel rejects our
12 position.

13 THE REFEREE: Do I understand, Mr.
14 Polish, that any redraft such as what he
15 suggests is unacceptable to Mr. Horvath?

16 MR. POLISH: So I understand.

17 THE REFEREE: Mr. Itzler, you bowed
18 your head. Does that mean you have given up,
19 because I have?

20 MR. ITLZER: I think so. Let me get
21 one last gasp.

22 THE REFEREE: I am astounded that at
23 this late date after spinning our wheels here
24 all day you people haven't gotten together on
25 an agreement.

1 MR. ITZLER: I tried my hardest.

2
3 MR. POLISH: Mr. Horvath just approach-
4 ed me and ask that I suggest that Mr. Vogel
5 draft what he chose to draft.

6 THE REFEREE: I would think that be
7 sensible on his part since he is so interested
8 about his brother.

9 MR. VOGEL: Your Honor, may I read
10 this into the record.

11 THE REFEREE: Which paragraph?

12 MR. VOGEL: Paragraph four.

13 "In the event that Horvath, or George
14 Horvath, or any person or persons or entities
15 controlled by or acting on their behalf,
16 commence or defend hereinafter any proceedings
17 brought by the guarantor against Neisco, Inc.
18 or the guarantor or its representatives or
19 nominees or seeks - - with respect to Neisco,
20 Inc. (other than to enforce payment of sums
21 due under the initial agreement) - - or with
22 respect to property in the State of North
23 Carolina upon which the guarantor has a lien
24 - - or directly or indirectly interferes
25 adversely with its business, then this

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41

1
2 guarantee shall terminate in all respects
3 forthwith and the guarantor be absolved of
4 any and all liabilities hereunder."

5 THE REFEREE: I would change has a
6 lien to assert a lien.

7 MR. VOGEL: I appreciate that sugges-
8 tion.

9 THE REFEREE: I want to tell you
10 gentlemen something quickly. I see Ernest
11 is shaking his head. I don't think that you
12 people - - I don't see what the problem is
13 with that clause.

14 MR. ERNEST HORVATH: We haven't decid-
15 ed yet.

16 THE REFEREE: You have two minutes to
17 decide it. All I am asking you to do is
18 read.

19 MR. POLISH: It's very difficult
20 reading the writing that is on here.

21 MR. ERNEST HORBATH: Do you want me
22 to see this?

23 THE REFEREE: I believe you, I know
24 Mr. Vogel's scribbling - - it's not so bad.

25 MR. ERNEST HORVATH: Since, I guess,

1 we have no alternative, we will agree.

2 THE REFEREE: Mr. Ernest Horvath,
3 you assent to that guarantee?

4 MR. ERNEST HORVATH: Yes, I do.

5 THE REFEREE: This will be executed.
6 I want you to read the paragraph as recited
7 into the record.
8

9 MR. VOGEL: Paragraph four?

10 THE REFEREE: I want that copy marked.

11 MR. VOGEL: Paragraph four of Court's
12 Exhibit "2" now reads as follows:

13 "In the event that Horvath, or George
14 Horvath, or any person or persons or entities
15 controlled by or acting on their behalf,
16 commence or defend hereinafter any proceedings
17 brought by the guarantor against Neisco, Inc.
18 or the guarantor or its representatives or
19 nominees or seeks - - with respect to Neisco,
20 Inc. (other than to enforce payments of sums
21 due under the initial agreement) - - or with
22 respect to property in the State of North
23 Carolina upon which the guarantor asserts a
24 lien - - or directly or indirectly interferes
25 adversely with its business, then this

1
2 guarantee shall terminate in all respects
3 forthwith and the guarantor be absolved of
4 any and all liabilities hereunder."

5 MR. POLISH: I would like to insert
6 one more thing.

7 THE REFEREE: You take it up with
8 Mr. Vogel.

9 MR. VOGEL: Your Honor, Mr. Polish
10 has suggested the insertion of the word
11 "knowingly" before "direct," so it would say
12 "knowingly directly or indirectly."

13 We accede to that suggestion.

14 THE REFEREE: Write it in now at
15 the place where it should be.

16 Let the record show the Court directs
17 if any of the parties wish to have copies of
18 this available, so that it can be drafted in
19 the proper or clean form, they can procure
20 it at my chambers tomorrow.

21 Next?

22 MR. VOGEL: The directors of Neisco
23 will forthwith resign their positions as
24 directors and such corporation actions as
25 is necessary will be taken forthwith to

1
2 acknowledge that fact.

3 THE REFEREE: "Forthwith," meaning
4 what?

5 MR. VOGEL: As soon as possible, Y
6 Honor.

7 THE REFEREE: Prior to confirmation?

8 MR. VOGEL: Yes, Your Honor.

9 MR. RADOM: This is about Mount
10 Clemens Industries. Pardon me. Gentlemen,
11 because we have been trying to get all of
12 the documents filed and have no problem later
13 on, I would suggest to Mr. Polish to deposit
14 with your secretary the resignations of the
15 officers and directors of Neisco. Secondly,
16 a deposit and transfer in straight form of
17 a certificate of capital stock of Neisco which
18 is owned by Mount Clemens Industries.

19 MR. POLISH: Excuse me, Mr. Radom,
20 you are in possession of that certificate.

21 MR. RADOM: If we have possession,
22 you will release it from the bank of Chicago
23 so we can have it delivered to the court.

24 MR. POLISH: Okay.

25 MR. VOGEL: And, Mount Clemens

1
2 Industries will take such action as is
3 necessary to acknowledge and, thereby, ratify
4 the action we have just described.

5 THE REFEREE: Mr. Horvath didn't
6 hear that.

7 MR. VOGEL: Mount Clemens Industries,
8 the sole stockholder of the ten issued and
9 outstanding shares of Neisco, will do the
10 following: It will authorize the transfer
11 of those shares to a designee of the Fund.
12 In addition, the directors and officers of
13 Neisco will resign forthwith and such corpo-
14 rate action as is necessary to ratify that
15 act will be taken as soon as possible.

16 MR. ITZLER: Not forthwith, on the
17 confirmation of the arrangement.

18 THE REFEREE: All actions will be
19 done and the Court will hold it as escrowee.
20 The Court will not in any way, have a change
21 of ownership while it's in Chapter 11. What
22 happens after is not its concern.

23 MR. POLISH: I would like to elaborate
24 on what your understanding is.

25 THE REFEREE: Once more you are asking

1
2 me?

3 MR. POLISH: I don't think that Mr.
4 Vogel has stated that which Mr. Radom and I
5 have agreed to. We will deliver the resigna-
6 tions and the escrow to you, and the stock to
7 you in escrow, to file with the Court. They
8 will endeavor to petition this court - -

9 THE REFEREE: Who is "they"?

10 MR. POLISH: The Pension Fund - -
11 to obtain whatever approval may be needed for
12 the transaction. The consent of the trustee
13 of Masmo will be sought to that transaction
14 and the contents of Mr. Harrison to that
15 transaction will also be sought and obtained
16 for the conveyance between Mount Clemens
17 Industries and the Pension Fund.

18 THE REFEREE: What if they are sought
19 but not obtained?

20 MR. POLISH: I can expect that, I
21 believe, Mr. Harrison will do it. I really
22 don't think I can speak for him, but it is
23 my understanding this was not be be part of
24 what Mr. Radom has agreed to.

25 THE REFEREE: Mr. Radom?

1

MR. RADOM: That is right.

2

3

4

5

MR. GLATZER: May I ask what the consent of the Masmo trustee has to do with the arrangement with Ernest Horvath?

6

7

MR. ITZLER: It has nothing to do with Ernest.

8

9

10

MR. GLATZER: We sold Mount Clemens Corporation which is the stockholder of Mount Clemens Industries.

11

12

THE REFEREE: So, you give them your assent. It's a meaningless act.

13

14

MR. VOGEL: They are still the record holder as of today.

15

16

17

18

THE REFEREE: They may not be. If that assent of the trustee of Masmo is necessary - - it may not be needed at all. He has divested himself of the other.

19

20

21

22

23

MR. POLISH: If he no longer has any interest, I have no reason in procuring that action. I am merely interested in making this a regular transaction and not exposing the Horvaths to any liability.

24

25

MR. RADOM: I want to have a statement made by Ernest Horvath, as well as George

1
2 Horvath, to the effect - -

3 THE REFEREE: I thought you people
4 had an agreement. Now it's as though you are
5 negotiating it here. I thought this was just
6 recited for the record?

7 MR. VOGEL: The last part of the
8 agreement is that the court suit in Chicago
9 will be dropped.

10 THE REFEREE: That we understood from
11 the beginning.

12 MR. VOGEL: And, it will be done with
13 prejudice.

14 MR. POLISH: There is another element.
15 It is my end of the agreement that is not
16 being mentioned.

17 Early in the Chapter 11 proceeding we
18 were required to find space for an office for
19 Neisco. By consent of all the parties Monmarte
20 rented the space and Neisco sublet a substantial
21 portion of the space from Monmarte. Monmarte
22 had subsequently been evicted and been asked
23 to leave by the Pension Fund. They are assum-
24 ing the obligations under that lease that
25 Monmarte now has. Have I adequately stated

1 that position?

2
3 MR. RADOM: I don't know whether the
4 Pension Fund requested Monmarte to depart;
5 I am not aware of it. In substance, we do
6 have an understanding, if I am advised cor-
7 rectly and I believe I am, that there is an
8 order in the court filed that Monmarte will
9 be released of any liability under the lease.
10 Is that your concern?

11 MR. POLISH: Yes, sir. That is an
12 order for eighty-five percent.

13 MR. RADOM: I frankly don't recall it
14 offhand.

15 THE REFEREE: What else, Mr. Vogel?

16 MR. VOGEL: Your Honor, I think the
17 last thing was something we have stated from
18 the very beginning, that we just want it made
19 clear by the Horvaths - - and I think is what
20 Mr. Radom was about to say when Your Honor
21 interrupted him - - that they make a statement
22 there has been nothing offered to them that
23 has not been discussed here in court, that
24 they have not received any other consideration,
25 that we have not asked him to forebear any

1
2 time, and we have not offered him any consid-
3 eration other than the consideration discussed
4 here today.

5 THE REFEREE: I don't know what that
6 all means. Ask that.

7 MR. VOGEL: Is that a fact? Mr.
8 George Horvath, you have heard today an
9 ascribed package of items that will be given
10 in exchange for certain other considerations
11 flowing to the Fund. We ask you simply wheth-
12 er or not you are receiving anything other
13 than that, whether or not we have made any
14 other special deal?

15 MR. GEORGE HORVATH: No, sir.

16 MR. VOGEL: Or whether or not we have
17 asked you to testify against or for the
18 trustee, or against the trustee or his nomin-
19 ees?

20 MR. GEORGE HORVATH: We never talked
21 about it.

22 MR. VOGEL: You have not been offered
23 anything in any way?

24 MR. GEORGE HORVATH: No.

25 MR. VOGEL: Mr. Ernest Horvath, have

1
2 you heard the questions I just asked?

3 MR. ERNEST HORVATH: Yes, sir.

4 MR. VOGEL: Are your answers the
5 same?

6 MR. ERNEST HORVATH: The same.

7 THE REFEREE: Except that he has been
8 offered a consulting agreement on the
9 guarantee.

10 MR. VOGEL: That's all in the record.

11 MR. WEINBERG: I think as long as
12 things are being put on the record, I would
13 deeply appreciate it on behalf of the cred-
14 itors committee if Mr. Radom would stand up
15 and put into language what has been indirectly
16 stipulated on the record about the ten
17 thousand dollars to be put up by the Fund as
18 a good faith deposit leading towards confirma-
19 tion.

20 I would like to have a deposit made
21 and be in a position to enter an order.

22 MR. RADOM: In lieu of a deposit, I
23 have suggested to you that the Fund - - and
24 I have been authorized to make this statement
25 - - will deposit ten thousand dollars with

1
2 the trustee in bankruptcy of Neisco. If it
3 is adjudicated, in the event that the plan
4 fails of confirmation, for any reason the
5 failing caused by the trustee of the Pension
6 Fund - -

7 MR. WEINBERG: Directly or indirectly?

8 MR. RADOM: Directly or indirectly.

9 THE REFEREE: Excepting it will be
10 deposited with a disbursing agent.

11 MR. ITZLER: May I ask Mr. Weinberg
12 if we are permitted to file the consents?

13 THE REFEREE: I have another problem
14 with that that I want to resolve. What are
15 we going to do about administration expenses,
16 fees and allowances?

17 MR. ITZLER: I would like an oppor-
18 tunity to discuss that problem with the
19 representative of the Pension Fund. In the
20 event we cannot arrive - - you are talking
21 now of attorneys' fees?

22 THE REFEREE: I am talking generally.
23 The expenses of administration, be they
24 creditor committee, attorneys, accountants,
25 all of them.

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MR. ITZLER: I mention it to Mr.

Radom before. We have not discussed it at length. I would like to attempt to have the Pension Fund pay these expenses as an outside party. If we can't agree on a figure, we will then make application to the Court for the granting of allowances. I am sure the creditors committee will do likewise.

THE REFEREE: Mr. Radom?

MR. RADOM: There is nothing to be gained with respect to speaking about any conversations for allowances. Whatever the Court likes - -

THE REFEREE: It's a question of whether or not the funds will come from the debtor. Assuming the Court fixes such allowances as it deems fair and reasonable, based upon whatever the relevant criteria or Court's judgment should show, those funds theoretically come from the debtor, the company which seeks revival. If it cannot meet the amounts fixed by the Court, the case fails of confirmation, and under the Brigantine Hotel case, decided by Judge Hand of the Second Circuit, whatever

1
2 the Court fixes as reasonable must be drawn
3 up by the debtor. It is not a deterrant
4 for the Court to fix a lesser sum merely be-
5 cause the debtor is having difficulty.

6 I want to know before we go much
7 further along in this case, that we have
8 been engaged in for two years, that applica-
9 tions are made to the Court and the Court
10 fixes them.

11 The funds come from the debtor, or
12 any compensation will come from outside third
13 parties, presumably the Fund. I don't want
14 to proceed all the way to confirmation and do
15 all the things necessary for confirmation,
16 which at this point are myriad, only to learn
17 after the Court fixes allowances, that the
18 debtor can't make it.

19 I think you might want to consider
20 that. The cases en re: Brigantine Hotel. If
21 you want, you can come into my chambers and
22 I will give you the citation or give it to
23 you.

24 Now, that is something to be so con-
25 sidered that you may not have considered but

1 ought to know.
2

3 MR. ITZLER: May I ask of the Pension
4 Fund - -

5 THE REFEREE: I don't want to get in-
6 volved in that. I am merely alerting the
7 Fund as to the possibility that if I fix
8 compensation and the debtor has not got the
9 funds to make it, I may adjudicate on that
10 basis, under that case, and I just want to
11 alert you both to the power of the Court.

12 Do you want to file acceptances with
13 the clerk?

14 MR. ITZLER: Yes, sir.

15 THE REFEREE: File them tomorrow. I
16 can adjourn the matter; I can't close the
17 first meeting today, in any event.

18 MR. ITZLER: May we adjourn this
19 matter, and I have an application that you
20 have to consider - -

21 THE REFEREE: First of all, we have to
22 get the acceptances tallied and then, maybe,
23 I can close the first meeting by the adjourned
24 date and appoint a disbursing agent, and fix
25 the deposit. Then you have to get your

1 schedules in, applications to confirm the
2 arrangement in, and any applications for
3 allowances.
4

5 MR. ITZLER: The big job is the
6 applications for allowances and the tallying
7 of the consents.

8 THE REFEREE: I suppose if we go over
9 to February 10th, it would not be outrageous.

10 February 10th at eleven o'clock,
11 gentlemen. The debtor is directed to file
12 acceptances to the arrangement by February
13 3rd, applications to confirm the arrangement
14 by February 9th, applications for allowances,
15 if any, by the 9th.

16 February 10th at eleven o'clock. Mr.
17 Itzler, there can be no agreement on these.

18 MR. ITZLER: Yes, sir.
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E-304

DEFENDANTS' EXHIBIT K (FOR IDENT.) -- LETTER FROM REGIONAL
COUNSEL OF INTERNAL REVENUE SERVICE TO LAURENCE VOGEL, DATED
APRIL 19, 1971 WITH PROPOSED STIPULATION FOR PAYMENT OF
FEDERAL TAXES, RE: NEISCO, INC.

Address any reply to: 26 Federal Plaza, New York, N.Y. 10007

US Treasury Department

Regional Council
Internal Revenue Service
North-Atlantic Region

Date:

APR 19 1971

In reply refer to:

CC:NY-GL-1612-WDH



Schaeffer, Kahn, Dale & Vogel, Esqs.
1501 Broadway
New York, New York 10036

Attention: Laurence Vogel, Esq.

In re: Neisco, Inc.
Arrangement - Ch. XI - #69-B-769

Taxpayer: Neisco, Inc.
529 Fifth Avenue
New York, New York

Gentlemen:

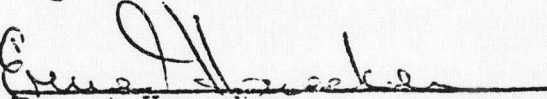
We are enclosing two copies of revised pages 11 and 14
through 18 of the new proposed "Stipulation for Payment
of Federal Taxes," a copy of which we recently forwarded
to your office.

If you have any questions, please feel free to contact
Mr. Walter D. Harris of our office, whose telephone number
is 264-0282.

Very truly yours,

MARVIN E. HAGEN
Regional Counsel

By:


Ernest Honecker
Assistant Regional Counsel

Enclosures
As stated

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

In the Matter of :

NEISCO, INC., :

Debtor. :

In Proceedings for an
Arrangement
No. 69-B-769STIPULATION FOR PAYMENT
OF FEDERAL TAXES

----- x

WHEREAS, on November 24, 1969, Neisco, Inc. (the "debtor") filed a petition proposing an arrangement under Chapter XI of the Act of Congress relating to bankruptcy, and

WHEREAS, the District Director of Internal Revenue, Manhattan, New York (the "District Director") has filed an amended proof of claim in the amount of \$1,307,285.77 against the debtor,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the debtor, the attorney for the Central States, Southeast and Southwest Areas Pension Fund (the "Pension Fund"), and the United States Attorney for the Southern District of New York, as attorney for the United States of America that, in the event that an arrangement is confirmed and as part of such arrangement, the aforementioned claim will be

reduced to \$455,798.75, which sum, together with interest at the rate of six (6) per cent per annum on all deferred installments thereon as hereinafter provided, shall be paid in accordance with the terms hereinafter set forth;

1. The aforesaid \$455,798.75 (hereinafter the principal sum) shall be paid to the District Director in eight (8) installments as follows:

(1) \$100,000.00 shall be paid within 30 days after the date of confirmation.

(2) \$50,828.40 on or before _____, 1972.

(3) \$50,828.40 on or before _____, 1973.

(4) \$50,828.39 on or before _____, 1974.

(5) \$50,828.39 on or before _____, 1975.

(6) \$50,828.39 on or before _____, 1976.

(7) \$50,828.39 on or before _____, 1977.

(8) \$50,828.39 on or before _____, 1978.

Full and timely payment of the first of the aforesaid installments (\$100,000.00) and timely payments of \$50,000.00 of each of the second and third installments are unconditionally guaranteed by the Pension Fund, its successors and assigns. In addition, the Pension Fund, its successors and assigns unconditionally guarantees

the timely payment of \$27,899.39 of the fourth of said installments. In the event that the debtor fails to make full and timely payment of any or all of the guaranteed amounts, which total \$227,899.38, written notice by the District Director of the default shall be given to the Pension Fund in care of Schaeffer, Kahn, Dale & Vogel, 1501 Broadway, New York, New York 10036. In the event that any default is not cured by the debtor or the Pension Fund within 30 days of the date of the notice, this agreement shall be in default and the United States may apply to the United States District Court for the Southern District of New York for a judgment and an order directing the Pension Fund to make immediate payment of the amount of the default (but not in excess of the applicable amount of its guaranty as herein provided) plus the cost of enforcing the guaranty. Such an application by the United States shall be conceded by the Pension Fund to be an application for an order to enforce the terms of the order of confirmation. The Pension Fund shall also consent to the exercise by said United States District Court of jurisdiction over the Pension Fund with respect to its guaranty of payments totalling

\$227,899.38 due pursuant to this stipulation.

2(a). Interest shall accrue at the rate of six (6) per cent per annum on each one of the above-listed installments from the date of the filing of the petition (November 24, 1969) until the date of actual payment of the respective installment. If at any time only a part of an installment is paid, interest shall continue to accrue on the unpaid balance thereof, but not on the paid part. After the final installment payment of the principal sum shall have been made, the District Director shall compute the "total interest," which shall be the interest which shall have accrued on all installments (and parts of installments) from the date of the filing of the petition up to the date of such final installment payment. The Director shall then divide such total interest into two equal halves. One half of said total interest shall be paid to the District Director on or before _____ 1979 and the other half of said total interest shall be paid to him on or before

_____ 1980.

2(b). There is presently an unsettled legal question as to whether or not the United States may legally require the payment of post-petition interest (based on taxes incurred by a debtor prior to a Chapter XI proceeding) for the period between the time of the filing of the Chapter XI petition and the time of confirmation of a plan of arrangement. There is some legal authority to the effect that such interest is uncollectible, if the prepetition tax claim of the Government is paid in full upon confirmation or within a short time thereafter.

In re Vaughan, 292 F.Supp. 731 (E.D. Ky. 1968), In re Johnson Electrical Corporation, 312 F.Supp. 940

(S.D. N.Y. 1970). The attorneys for the captioned debtor and for the Pension Fund are of the opinion that the post-petition interest (based upon the unpaid prepetition taxes of the captioned debtor) for the Chapter XI period may not be legally collectible irrespective of the fact that such taxes will not be paid in full upon confirmation or within a short period of time thereafter. The

Johnson Electrical Corporation case, supra, is now on

appeal ~~by~~ the United States Court of Appeals for the Second Judicial Circuit. It is hereby expressly agreed that the terms and provisions of paragraph 2(a), supra, shall be deemed to be amended or modified to conform to any part of a final decision in the Johnson Electrical Corporation case, or in any other case ^{decided by} in the Second Circuit Court of Appeals or the United States Supreme Court, which (1) is rendered before the time for payment of the first half of the total interest, (2) is relevant to the facts of the captioned proceeding, and (3) is determinative of the rights of the United States to collect such post-petition interest for the Chapter XI period. Notwithstanding that the provisions of the next preceding sentence may become applicable, and so affect the duty of the debtor to pay post-petition interest for its Chapter XI period, nothing contained in that sentence shall be construed to affect the debtor's duty to pay (at the rate, at the times, and in the manner set forth in paragraph 2(a), supra) interest on each one of the unpaid installments of the principal sum from the date of confirmation of a plan of arrangement until the date of actual payment of the respective installment.

3. This Agreement shall be in default (unless such default is cured within 30 days of the date of the default) if (a) the debtor fails to make full and timely payment of any of the payments provided for in paragraphs 1 or 2 supra, or, (b) all Federal Taxes accruing since the date of filing of the petition for arrangement are not paid within 30 days of confirmation, or (c) all Federal taxes which are payable between the date of confirmation and the date of full payment of the principal sum plus total interest (as hereinbefore defined) are not paid in full on the due dates as prescribed by law or (d) any other provisions of the stipulation are violated. Upon such default, the United States shall have the right to declare the remaining installments due the United States on the claim against the debtor in the amount of \$455,798.75 to be immediately due and payable and those taxes may thereupon be collected by levy or by any other proceeding authorized by the Internal Revenue Code for the collection of Federal taxes. The District Director shall give written notice of any default to the

Pension Fund in care of Schaeffer, Kahn, Dale & Vogel,
1501 Broadway, New York, New York 10036.

4. In the event that the Agreement is in default pursuant to the provisions of paragraph 3, supra, the United States shall have the right to file a claim against the debtor for those taxes listed on the amended proof of claim as being due from Masmo, Incorporated (the "Masmo Taxes"). In that event, the debtor may object to so much of the District Director's proof of claim as demands payment from the debtor of the Masmo Taxes. The arrangement and order of confirmation shall provide for retention of jurisdiction by the Bankruptcy Court for the purpose of permitting the United States to file such proof of claim and the debtor to object thereto pursuant to Section 368 of the Bankruptcy Act.

In the event that the debtor is adjudicated bankrupt the United States shall also have the right to file a claim against the bankrupt estate for said Masmo Taxes and, in that event, the Trustee in Bankruptcy may similarly object to so much of the District Director's proof of claim as demands payment from the bankrupt estate of the Masmo Taxes.

5. Nothing in paragraphs 3 and 4 shall be construed to accelerate the payments by the Pension Fund pursuant to its guaranty set forth in paragraph 1, nor be construed to relieve the Pension Fund from its unconditional guaranty of up to the sum of \$227,899.38.

6. The running of all statutory periods of limitation on the assessment and collection of the taxes asserted to be due in the amended proof of claim filed by the District Director (including the Masmo Taxes) is suspended until _____, 1981.

7. Until the debtor has made full payment of the principal sum set forth in paragraph 1, supra, and the total interest (as computed in paragraph 2, supra) (hereinafter "Full Payment");

(a) the debtor will segregate and hold apart from all other funds, all moneys deducted and withheld from employees or collected from others for taxes under any law of the United States, and shall forthwith deposit the amounts so withheld or collected in a separate tax account.

Such amounts shall be used and disbursed only for the particular purposes for which they are set aside or as more specifically set forth below.

(b) All Federal taxes required to be deducted and withheld from employees, and all Social Security taxes required to be contributed by the debtor, shall be remitted by the debtor, together with a Federal tax deposit form, to a bank which is an authorized federal depository for taxes, not later than the end of the second business day next succeeding the date upon which taxes were required to be deducted or withheld.

(c) All federal excise taxes listed on Quarterly Federal Excise Tax Return, Form 720, which the debtor is required to collect or for which liability is incurred shall be deposited in the tax account on or before the end of the calendar week next succeeding the week during which such amounts are required to be collected or liability for them is incurred; and all such excise tax funds on deposit at the end of said second calendar week shall forthwith be remitted by the debtor, together with the federal tax deposit form, to a bank which is an authorized federal depository for taxes.

(d) The debtor shall, within one calendar week after making any remittances to a depository for Federal

taxes, furnish the District Director of Internal Revenue with evidence that it has made the deposits, on forms furnished by, and under the conditions as may be proscribed by the District Director.

8. The debtor shall not in its petition for an order confirming the present or any amended plan of arrangement in this proceeding seek a provision or order in any manner restraining the United States of America from collecting any Federal taxes, interest, or penalties.

9. Prior to Full Payment of the principal sum and total interest the debtor shall make no gifts of any kind, shall not pay excessive, unreasonable, or unwarranted salaries, fees, or other compensation to its officers or directors, and shall not accelerate payment of any indebtedness owed by it to the Pension Fund, unless there is a default and a resulting foreclosure and acceleration is provided for in case of such default under the terms of any presently existing mortgage or other security agreement in favor of the Pension Fund or exists pursuant to rights granted by law in case of such default.

10. Prior to Full Payment of the principal sum and total interest the debtor shall not declare or pay any dividends upon its stock, declare stock dividends, or make any other distribution on its stock or purchase, redeem, or otherwise acquire shares of its stock, in a manner that would impair the ability of the debtor to pay taxes, or fulfill its obligations under this agreement.

11. (a) Prior to the Full Payment of the principal sum and total interest the debtor shall not, subsequent to the date of confirmation of a plan of arrangement, create any mortgages, liens or other encumbrances upon, or pledge any of the properties now owned or hereafter acquired by the debtor in any way or manner that would impair the ability of the debtor to pay taxes or to fulfill any of its obligations under this agreement.

(b). . . It is anticipated that from time to time after confirmation the debtor will have need to borrow working capital. In order to obtain loans of such capital it is probable that the tax liens of the United States on the property of the debtor will have to be subordinated to liens of the lenders of such capital.

By virtue of this stipulation (executed by the United States Attorney for the Southern District of New York, as attorney for the United States of America, including its agency, the Internal Revenue Service, and, therefore, binding upon said United States and said Internal Revenue Service) it is expressly agreed that, whenever, in order to raise such capital, the debtor requests that said tax liens shall be so subordinated, the Internal Revenue Service will subordinate said liens as so requested, insofar as it (or its employees) may be authorized to do under the terms and within the meaning of Section 6325(d)(1) or (2) of the Internal Revenue Code of 1954 and the Regulations adopted thereunder.

12. (a) Any amount paid or credited on account of Federal taxes shall be applied to the items of said Federal taxes in the manner determined in the discretion of the District Director, provided, however, that no amount paid pursuant to this agreement shall be applied to interest on said taxes until the principal and shall first have been fully paid.

the absence of a default by the debtor and a resulting foreclosure, either the Pension Fund or the debtor to accelerate, prior to Full Payment of the principal sum and total interest, the payment of any indebtedness owed by the debtor to the Pension Fund.

14. The term debtor as used shall include any corporation organized or made use of for effectuating the plan of arrangement.

15. The term District Director as used herein shall include the successors in the office of such District Director. All notices and all payments to the District Director shall be sent addressed as follows:

District Director of Internal Revenue
P.O. Box 2899
Church Street Station
New York, New York 10008

Attention: Chief, Special Procedures Staff

16. The provisions of this stipulation shall apply in this proceeding in lieu of the deposit otherwise required under the provisions of Section 337(2) of the Bankruptcy Act. In the event that any material fact has been misrepresented by any signatory to this Stipulation, or in the event that any order of

(b). Even though the debtor may now or hereafter be using the accrual method of accounting on the basis of which it regularly computes its income in keeping its books, it is hereby agreed that no amount of interest, which is based on the debtor's tax liabilities provided for herein and which is payable by reason of law or pursuant to this stipulation, shall be allowable as a deduction for Federal income tax purposes until the principal sum shall first have been fully paid, and such interest deduction shall only be claimed by the debtor and allowed when interest payments are in fact made pursuant to the provisions of this stipulation.

13. Notwithstanding anything to the contrary contained in this stipulation, any security interest, mortgage, or any rights granted by law or contained in any security agreement in favor of the Pension Fund, with respect to property owned by the debtor on the date of this stipulation, shall remain in full force and effect and shall not be altered in any way by this stipulation, provided, however, that nothing contained in this stipulation shall be construed to authorize, in

confirmation or any other order entered in this proceeding does not comply strictly with the terms of this stipulation then, at the election of the District Director, the terms of this stipulation shall be of no force or effect, and the deposit provisions of Section 337(2) of the Bankruptcy Act shall not be waived. If the District Director does not learn of the non-compliance with the terms hereof or of the misrepresentation in time to act before confirmation, the District Director may, in his discretion, declare the debtor to be in default.

17. The provisions of this stipulation shall be incorporated by reference in the plan of arrangement and order of confirmation entered in this proceeding.

18. This stipulation is contingent upon:

(a) the taking effect as of the date hereof of the restrictions and prohibitions upon the debtor as set forth herein, and (b) the entry of an order of confirmation which shall incorporate the terms and provisions of this stipulation. The United States and the debtor reserve

the right to withdraw their consent to this stipulation at any time prior to the entry of an order confirming the plan of arrangement.

19.. Venue for all litigation pertaining to this stipulation or matters in this stipulation shall be laid only in the Southern District of New York.

Dated: New York, New York

1971.

BALLON, STOLL & ITZLER
Attorneys for Debtor

By: _____
Ronald S. Itzler

WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York

By: _____
Susan Freiman,
Assistant United States Attorney

SCHAEFFER, KAHN, DALE & VOGEL
Special Counsel to Joseph Radom
Attorney for the Pension Fund

By: _____
Laurence Vogel

This Stipulation is approved and confirmed.

NEISCO, INC.
Debtor

By: _____
(Name)

(Title)

This Stipulation and the arrangement for liquidation of
taxes owing to the United States therein set forth are
hereby approved.

INTERNAL REVENUE SERVICE

By: _____
Marvin E. Hegen
Regional Counsel,
North-Atlantic Region
(New York)

DEFENDANTS' EXHIBIT L (IN EVIDENCE) -- LETTER FROM BALLON
TO RADOM DATED FEBRUARY 3, 1970.

USA 23a-475
(ED. 4-23-71)

DEFENDANT
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

L - *il*

FPI-MI-9-24-75-SOK-4417

February 3, 1970

Joseph Radom, Esq.
1643 First National City
Bank Building
Detroit, Michigan

Dear Joe:

Permit this to serve as a reminder that we await word from you with reference to the Fund's intentions regarding the financing of a Plan of Arrangement. In connection therewith, it would also be necessary for you to authorize me as to the limits of any such Plan.

I promised to advise you as to the fees we would require in order to enable us to file the remaining Petitions in Bankruptcy. I frankly believe that \$5,000 would be an absolute minimal fee therein. }c

May I hear from you at your earliest convenience.

Cordially,

FEMB/bz

Frederick E. M. Ballon

DEFENDANTS' EXHIBIT M (FOR IDENT.) -- OPINION OF BONSAI, J.
IN HORVATH V. DUFFEY ET AL, DATED JUNE 10, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

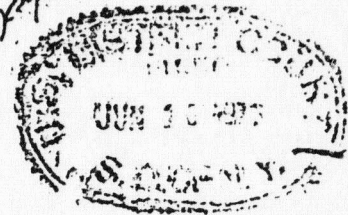
ERNEST V. HORVATH,

Plaintiff,

-against-

THOMAS J. DUFFEY, HERMAN A. LEUKING, JR.,
ALBERT D. MATHESON, WILLIAM J. KENNEDY,
JOHN A. MURPHY, JACK A. SREETZ, JOHN
SPICKENMAN, FRANK E. FITZSIMMONS,
ROBERT HOLMES, DONALD PETERS, WILLIAM
PRESSER, ODELL SMITH, ROY L. WILLIAMS,
FRANK H. RANNEY, and JOSEPH MORGAN, both
individually and as Trustees under a
Common Law Trust of the Central States
Southeast and Southwest Areas Pension
Fund, JOSEPH RADON, individually, ALLEN
DORFMAN, individually, and FIRST DOE
through FOURTH DOE, inclusive,

Defendants.



73 Civ. 1243

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Of Counsel

BEST COPY AVAILABLE

O P I N I O N

BONSAL, D. J.

In this diversity action, plaintiff, formerly president and chief operating officer of Neisco, Inc. ("Neisco"), a North Carolina textile manufacturer, is suing members of the 1969-1972 Board of Trustees ("Trustees") of the Common Law Trust of the Central States Southeast and Southwest Pension Fund ("Trust"), both individually and in their official capacities, and an attorney who represented the Trust. Plaintiff claims that the Trust agreed that Neisco would give him a lifetime contract whereby plaintiff was to serve as a consultant to Neisco at an annual salary of \$36,000, plus payment of \$18,000 per year to plaintiff's wife for five years if plaintiff should predecease her, and that the Trust would guarantee payment of up to \$200,000 if Neisco failed to meet these obligations.

Plaintiff's amended complaint asserts four causes of action. The first cause of action, asserted against the Trustees in their official capacities, alleges that the Trust breached the alleged lifetime contract in that plaintiff has not been paid his salary thereunder since March 21, 1972 when Neisco was adjudicated a bankrupt and the Trust has not complied with its obligations under the guaranty. The second cause of action, asserted against all the defendants, alleges that plaintiff was induced to remain with Neisco until the transfer of ownership of the company to the Trust by the false and fraudulent representations of defendants that the Trust would agree to the alleged lifetime contract and guaranty. In the

third cause of action, plaintiff claims that defendant Joseph Radon ("Radon"), who was special counsel to the Trust in the negotiations with the Horvaths during the relevant period, maliciously interfered with the performance of the alleged contract and guaranty. The fourth cause of action, asserted against the Trustees, alleges that plaintiff is entitled to recover \$700,000 on the theory of quantum meruit.

Defendants deny any liability to plaintiff and contend that there is no personal jurisdiction over them; that no contract or guaranty was created by the negotiations in 1969 through 1972; that if any contract and guaranty exist, they are oral and their enforcement is barred by the Statute of Frauds; that defendants did not defraud plaintiff; that plaintiff's claim of malicious interference with contract cannot be proven; and that the claim under quantum meruit is insufficient as a matter of law.

On April 27 and 28, 1976, the Court tried the issue of whether there is a contract and guaranty since the outcome of this issue may obviate need for trial on the issue of the Statute of Frauds and certain of the parties' other claims and defenses. Plaintiff's case consisted of the testimony of plaintiff and his brother, George Horvath, who was treasurer and chairman of the Board of Directors of Neisco ("George"). Plaintiff introduced numerous transcripts of the proceedings pertaining to Neisco in the Bankruptcy Court before Bankruptcy Judge Roy Sabitt; minutes of official proceedings of the Trustees; portions of the depositions of defendant Radon and defendant Trustee Albert D. Matheson, and several other

documents. Defendants called no witnesses at the trial but relied upon the plaintiff's witnesses and exhibits as supplemented by additional transcripts of the Bankruptcy Court proceedings and other documents.

The Facts

Plaintiff was the president of Neisco during the period involved in this action. George was the chief financial officer of Neisco and the other companies owned by the Horvath family^{2/} and in this capacity handled negotiations with the Trust.

During the period from 1964 to March 21, 1972 when Neisco was adjudicated a bankrupt, George obtained financing for the Horvath companies from the Trust. In 1964, the Trust made a loan to Masmo, Inc. ("Masmo") secured by certain of its assets as collateral. In 1967, the Trust loaned Neisco \$1.5-million, again secured by Masmo's assets (which had been transferred to Neisco).

In mid-1969, in an effort to protect its prior investments in the Horvath companies and to satisfy Neisco's need for working capital, the Trust agreed to lend additional funds to Neisco if the Trust could retain some control over Neisco's expenditures.^{3/} On November 24, 1969, Neisco filed a petition under Chapter XI of the Bankruptcy Act, §722, and the matter was assigned to Bankruptcy Judge Roy Babitt. At the time the petition was filed, Neisco owed the Trust approximately \$5-million^{4/} and the Trust held mortgages and liens on practically all of Neisco's assets, which were worth less than half of the total debt. In addition, Neisco was \$455,000 in

arrears on its federal taxes.^{5/} During the pendency of the Chapter XI proceeding, the Trust loaned Neisco an additional \$1.6-million, which was paid in installments as needed for Neisco's business. One Mr. Rugendorf countersigned Neisco's checks for the Trust.

George testified that as early as 1969, amicable relations between the Horvaths and the Trust had been broken down; that George had threatened suit against the Trust; and that although he had met with the Trustees^{6/} in his negotiations on behalf of the Horvath companies prior to the filing of the Chapter XI petition, after this filing relations were so strained that most of the discussions were conducted through attorneys.

At the direction of Bankruptcy Judge Babitt, there were frequent meetings among George, the Neisco attorneys, an Assistant United States Attorney, and representatives for the Trust, for the purpose of devising a plan of arrangement for confirmation under Chapter XI and to settle the debts of the other Horvath companies.

George testified that on April 6, 1970 he and the Neisco attorneys met at the latter's offices with representatives for the Trust, including Radom, and discussed a proposal by the Trust that the Neisco stock then owned by plaintiff and George be purchased for \$50,000. It was agreed that plaintiff would remain with Neisco to advise the new owners on the manufacturing operations until confirmation of the plan of arrangement. At this meeting George sought to obtain agreement from the Trust on his proposal that plaintiff be given a lifetime contract as a consultant to Neisco with an annual salary of \$52,000, the amount he was receiving by order of the

Bankruptcy Court in the Chapter XI proceeding. George testified that no final decision was made at this meeting as to either this proposal or the several other proposals he made regarding settlement of the debts of the other Horvath companies.^{7/}

The evidence indicates that during the course of further negotiations, George modified his proposal to provide that Neisico would pay plaintiff \$36,000 per year, and would pay \$18,000 to his wife for five years if he should predecease her, and that the Trust would guarantee payment to plaintiff of up to \$200,000 if Neisico should fail to meet these obligations.

At a Board of Trustees meeting on June 23, 1970, Radom presented, as part of a plan for settlement of the various debts owed to the Trust by the Horvath companies, a recommendation that plaintiff be given a lifetime contract and guaranty as last described above. Radom stated that his recommendation was subject to "everything else [being] put together and properly documented." The Trustees approved the recommendation at that time.

On July 1 or 2, 1970, according to George's testimony, he and Neisico's attorneys met with an attorney for the Trust and others who stated that the Trust had approved the lifetime contract and guaranty, which would take effect upon confirmation of the plan of arrangement in the Chapter XI proceeding.

Negotiations and appearances before Bankruptcy Judge Babitt continued through 1970. The Bankruptcy Court transcripts indicate that at one point the Trust, the United States, Neisico's creditors' committee, and the Horvaths reached tentative consensus

on several aspects of the plan of arrangement to be submitted for confirmation. However, nothing was finalized because the United States needed approval of the terms pertaining to Neisco's tax arrearages.

On February 5, 1971 the Trustees approved a resolution involving proposals as to several Horvath companies, including Neisco. Radom, who presented the resolution, stated in his deposition that the resolution did not cover all the proposals for settlement of the Horvath companies' debts.

Negotiations among the parties to the Chapter XI proceeding continued, but as of November, 1971 (almost two years after the petition was filed) no final plan of arrangement had been submitted to the Bankruptcy Court.^{8/}

On February 1, 1972, the Horvaths, Neisco and Trust's representatives stated to Bankruptcy Judge Babitt that they had agreed to a plan of arrangement containing five points, one of which was the lifetime contract and guaranty for plaintiff.^{9/} However, since no provision for administration expenses had been made in the parties' proposal and there was no agreement as to who should bear these costs, Judge Babitt stated that the plan could not be confirmed at that time.

By letter dated March 13, 1972, the Trust informed Neisco that it was no longer interested in financing the plan of arrangement. Since the Trust was Neisco's only potential source of funds, no plan of arrangement was confirmed. Neisco was adjudicated a bankrupt on March 21, 1972 and plaintiff left Neisco's employ the

next day.

Plaintiff testified that he did not participate in most of the negotiations and learned of the proposed lifetime contract and guaranty from George and Neisco's attorneys.

Discussion

Plaintiff in his complaint and in his testimony at trial contends that the agreement giving him a lifetime contract with the Trust's guaranty was made in April, 1970 and February, 1971, and "reaffirmed" on November 4, 1971 and February 1, 1972, apparently referring to appearances before the Bankruptcy Court. Defendants deny that the Trust agreed to any such contract or guaranty except as part of an arrangement as confirmed by the Bankruptcy Court in Neisco's Chapter XI proceeding; that no arrangement was confirmed; and that therefore there is no obligation on their part.

A few basic principles govern whether the parties made a binding contract (or guaranty) or merely conducted preliminary negotiations. See 1 Cornell on Contracts, §22, at 62-64 (1950). The first stage of contract formation is one party's making of an "offer."

The "offer" must be a "promise" and

"mere expression of intention or general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer." Beverage Distributors, Inc. v. Olympia Brewing Co., 440 F.2d 21, 29 (9th Cir.), cert. denied, 403 U.S. 906 (1971).

Cf. Antonucci v. Stevens Dodge, Inc., 73 Misc. 2d 173, 340 N.Y.S.2d 979 (Queens Co. Civ. Ct. 1973). An offer is a "manifestation of willingness to enter into a bargain so made as to justify another

in understanding his assent to that bargain is invited and will conclude it." Restatement of the Law Second, Contracts, §24 (Tent. Draft No. 1, 1964). See V'Soske v. Barwick, 404 F.2d 495, 499 (2d Cir. 1968), cert. denied, 394 U.S. 921 (1969). Whether an offer was extended and then a contract made by the assent of the offeree must be determined in light of the surrounding circumstances. Corbin, supra at §23, at 67-70. See also Restaurant Associates Industries, Inc. v. Anheuser-Busch, Inc., 397 F.Supp. 1213 (S.D.N.Y. 1975).

A review of the credible evidence leads to the conclusion that the parties' negotiations in April, 1970 and thereafter, as well as comments made by the Trust's representatives to the Bankruptcy Court regarding the lifetime contract and guaranty were intended as one facet of an overall plan of arrangement to be devised by the parties to the Chapter XI proceeding and then to be confirmed by the Bankruptcy Court. If plaintiff relied upon certain statements made in these circumstances in reaching the conclusion that a binding contract had been made, this reliance seems unreasonable in light of the several years of the parties' negotiations both prior to and after the filing of the Chapter XI petition. Moreover, Bankruptcy Judge Babitt repeatedly stated to the parties present that nothing was definite and the Trust was not bound to go forward in funding Neisco unless a plan of arrangement was confirmed. The Court is not persuaded by plaintiff's contentions which focus on isolated comments before the Bankruptcy Court by the Trust's representatives (including Radom) since plaintiff seeks thereby to take

these comments out of the context of two and a half years of discussions.

Defendants' contention that no contract was entered into at the times alleged by plaintiff is supported by George's testimony that as of April 6, 1970, the Horvaths were asking for an annual salary for plaintiff of \$52,000, while negotiations in November, 1971 and thereafter involved figures ranging from \$25,000 to \$36,000 per year.^{10/} Payments to plaintiff's wife were similarly the subject of these negotiations.

Moreover, plaintiff's belief that he had obtained the alleged lifetime contract and guaranty was based largely on what he was told by George who admittedly had strained relations with the Trust after 1969.

Even if a contract could be said to have been formed here, the circumstances, the statements of the Trust's representatives to the Bankruptcy Court, and the actual and apparent authority granted to negotiate on behalf of the Trust in regard to all the Weisco matters indicate that the lifetime contract and guaranty only were to become effective and were contingent upon confirmation of a plan of arrangement. It was the plan of arrangement which was necessary to protect the Trust's investment in Weisco and was the overriding purpose for the negotiations. Thus, confirmation of the plan of arrangement would have constituted a condition precedent to Weisco's or the Trust's duty of performance. See 33A Corbin, *supra*, §629, at 16 (1951); Restatement of the Law Second, Contracts, §250 (Tent. Draft No. 7, 1972). According to plaintiff's and George's testimony,

payments of plaintiff's salary under the alleged contract were not to begin until confirmation of this plan. Non-occurrence of the condition precedent, i.e., confirmation of the plan, would have excused performance by the Trust of any duty otherwise owed to plaintiff. Restatement of the Law Second, Contracts, §251 (Tent. Draft No. 7, 1972).

Accordingly, the Court finds that plaintiff has not borne his burden of proof that a lifetime contract and guaranty existed and the first cause of action is dismissed.

Plaintiff cannot prevail on his fourth cause of action either since a claim under the theory of quantum meruit cannot be maintained for compensation for services not yet performed. See 5 Corbin, supra §1109, at 581-83 (1951). Cf. Levi v. Power Conversion, Inc., 47 App. Div. 2d 543, 363 N.Y.S.2d 103 (2d Dep't 1975). Plaintiff testified that he had been paid for all but one week's salary (\$1000) for services rendered as president of Weisco until March 21, 1972, the date the company was adjudicated a bankrupt and the last day of plaintiff's employment with it. Plaintiff has filed a claim for that sum with the Bankruptcy Court. Accordingly, plaintiff's fourth cause of action is dismissed.

With respect to the second and third causes of action, a pre-trial conference will be held on June 21, 1976 to determine further proceedings.

The foregoing constitute the Court's findings of fact and conclusions of law as to the plaintiff's first and fourth causes of

action. Fed. R. Civ. P. 52(a).

Entry of judgment will await disposition of plaintiff's second and third causes of action.

It is so ordered.

Dated: New York, N.Y.
June 10, 1976.

DUDLEY B. BONSAI

U. S. D. J.

Footnotes:

1/ Plaintiff is a New York citizen and the defendants are each citizens of states other than New York. New York law applies to this action. Ingrasie v. Shell Oil Co., 394 F.Supp. 875 (S.D.N.Y. 1975).

2/ Plaintiff and George owned Masmo, Inc. Masmo, Inc. owned 80% of the stock of Mount Clemens Corporation, the remaining 20% being publicly owned. Mount Clemens Corp. owned Mount Clemens Industries, which owned Weisco, Inc. Inc.

3/ The Trust was Weisco's major creditor.

4/ It appears that the Horvath companies owed the Trust a total of \$12-\$13-million, including the \$5-million debt of Weisco.

5/ Masmo also owed the United States back taxes.

6/ George testified that he dealt with Dorfman only prior to the filing of the petition in Chapter XI.

7/ Some of the other proposals involved transfer of ownership of textile mills owned by Masmo, transfer of life insurance contracts on plaintiff's and George's lives, and renegotiation of a lease and mortgage involving properties of Montmartre, Inc. (another company owned by the Horvaths which was indebted to the Trust).

8/ At the September 2, 1971 hearing in the Bankruptcy Court, the Assistant United States Attorney announced that approval of the then pending proposals regarding the Weisco tax arrearages would be forthcoming. This approval had been the stumbling block to a plan of arrangement for the previous months. When the formal approval was

received, it turned out to be contingent upon the Horvaths "having nothing further to do with Neisico after the plan was confirmed." See Bankruptcy Court Transcript (hereinafter "B-Tr.") at 4-5 (Nov. 4, 1971). Also, in the summer and fall of 1971, it appears that the Trust changed its mind about funding the plan of arrangement because Dorfman had been indicted for allegedly accepting a bribe from George in connection with the loan to Neisico in 1969. See B-Tr. at 21-24 (July 28, 1971). Radom stated to the Bankruptcy Court, *inter alia*, that the Trust did not want the Horvaths to be involved with Neisico; that the Neisico debts were very large and far in excess of the Trust's security; and that Neisico's business had not improved materially since the Chapter XI petition was filed. See B-Tr. at 8-10 (Sept. 2, 1971). The Bankruptcy record also reveals that on November 4, 1971 the Horvaths stated that they agreed to change the proposed lifetime contract and guarantee to provide that Neisico would pay plaintiff \$36,000 per year for five years, then \$25,000 per year for plaintiff's life, with nothing to be paid to plaintiff's wife. The Trust, under this revised proposal, was to guarantee up to \$125,000 if Neisico failed to pay. See B-Tr. at 4 (Nov. 4, 1971).

2/ It appears that the terms of the lifetime contract at this stage were: \$36,000 per year to plaintiff for life; \$18,000 per year to plaintiff's wife if he should predecease her, and a \$200,000 guaranty by the Trust.

10/ See notes 8 and 9 *supra*.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss .

VINCENT PANZA, being duly sworn,
deposes and says that deponent is not a party to the action,
is over 18 years of age and resides at 2002 ELLIS AVE.

BRONX, NYC

That on the 25th day of MARCH, 19 77,
deponent personally served the within EXHIBITS

upon the attorneys designated below who represent the
indicated parties in this action and at the addresses below
stated which are those that have been designated by said
attorneys for that purpose.

By leaving 1 ^{copy} true ~~copies~~ of same with a duly
authorized person at their designated office.

~~By depositing true copies of same enclosed
in a postpaid properly addressed wrapper, in the post office
or official depository under the exclusive care and custody
of the United States post office department within the State
of New York.~~

* Names of attorneys served, together with the names
of the clients represented and the attorneys' designated
addresses.

GREENBAUM, WOLFF & ERNST
Attorneys for Defendants-Appellees
437 Madison Ave.
New York, N. Y. 10022

Vincent Panza

Sworn to before me this

25th day of MARCH, 19 77.

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930503
Qualified in Bronx County
Commission Expires March 30, 1978